Supreme Court, U.S.
FILED

94 421 SEP - 8 1994

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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 19____

M. ASHLEY DICKERSON, a/k/a MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW and MARY ANDREW,

Petitioners,

v.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Respondents.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

---

M. Ashley Dickerson
Dickerson & Gibbons, Inc.
1330 East 15th Avenue
Anchorage, Alaska 99501
(907) 376-5539
ATTORNEYS FOR PETITIONER

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158 14

QUESTIONS PRESENTED FOR REVIEW

I. Has denial of access to property by the combined acts of the Borough and private persons taken away property without due process of law?

II. Has there been a denial of equal protection and due process by the lower and appellate courts upholding the imposition upon subsequent purchasers who are black an obligation to redo what had been accepted from white subdividers at the time of original subdivision?

III. Did the April 15, 1991 meeting without notice to petitioners amount to a denial of equal protection and due process?

IV. Has there been a denial of equal protection, taking of property without due process and 42 U.S.C. 1993 rights of black litigants despite lack of showing of denials being motivated by racial animus?

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JURISDICTION ON WRIT OF CERTIORARI

The jurisdiction of this court is invoked under provision of the Constitution of the United States, Article 3, Section 2 and 28 U.S.C., Section 1254(1) and Supreme Court Rule 10(a) since a United States Court of Appeals has so far departed from the accepted and usual course of judicial conduct and sanctioned such a departure by a lower court as to call for an exercise of this court's power of supervision.

Petitioners contend that pursuant to Supreme Court Rule 10(a), the Appellate Court for the Ninth Circuit has decided a federal question in a way in conflict with accepted and usual course of judicial proceedings and has sanctioned such a departure by the District Court for the District of Alaska. Petitioners further contend that the Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by this court and has decided that federal question in a way that conflicts with applicable decisions of this court.

The judgment sought to be reviewed

was entered on the 22nd day of July, 1994. The motion for rehearing was denied on the 24th day of August, 1994.

Involved in this case are the Fourteenth Amendment to the U.S. Constitution, 42 U.S.C., Section 1983, Borough Platting Regulation 16.15.035 (4), Platting Regulation 16.05.030 and Platting Regulation 16.05.020. All are set forth verbatim in the Appendix.

STATEMENT OF THE FACTS

On the 9th day of August, 1976 William A. Andrew and Mary Andrew, in the process of subdividing a part of their original homestead, gave a two hundred foot easement tc certain properties which bordered on a swamp. The two hundred foot easement was necessary in order to furnish high ground upon which a Matanuska Susitna Borough road could be constructed. (App. I1-2) In 1981 forty acres of that land were sold to M. Ashley Dickerson, Larry D. Card and wife and Steve Browner and wife, to be divided later by giving twenty acres thereof to Dickerson and ten acres each to the Card and Browner families. (App. P1-4) William and Mary Andrew took back a deed of trust, giving to the purchasers certain warranties including access by way of the easement given. For the first 5 years after the purchase of the Browners, Cards and Dickerson, the ten acres standing directly adjacent to the forty were owned by the son of William and Mary Andrew and no problems resulted.

In order to meet subdivision requirements, the Andrews had been required to construct access to the forty

acres by a road which was a continuation of Trail's End. The road was frequently used by William Bocast, an adjoining neighbor, for hunting, snowmobiling and berry picking. It was frequently used by Dickerson, family and friends for the same purposes, including wood cutting. No construction had been planned at that time by either party but by 1990, Dickerson had planned to construct a house for rent on her twenty acres which adjoined her homestead. An attempt was made in '87 to take the usual drive through the road continuation of Trail's End which lead to the forty acres, but the purchasers of the ten acres had blocked same by completely destroying the road and landscaping it as a part of their lawn.

The road had been used in the past to access Jeep trails which went through the forty acres. After being unable to access the property, the purchasers decided to have the land surveyed in order that the lines may be clearly distinguished. The survey revealed that not only had the Williamses ditched and destroyed the road but had created a large stash pile which blocked entrance to the forty acres and

also cleared a spot on the forty acres and stored a large boat there.

During the survey the Williamses sought to have the two hundred foot easement vacated. They stated they wanted it restored to their property, although it had never been a part of their property since their deed was given subject to easements of records. (App. Q1-4)

In a conversation with the daughter of William A. Andrew, Linda Andrew Wilbur, Jean Williams, one of the purchasers of the property, made the statement when Linda tried to explain to her why the wide easement was necessary in view of the swamp below and the inability to put in a Mat Su Borough approved road in the swamp, Jean Williams had replied:

> "I just don't want a bunch of blacks back there, would you?" (App. B1-3)

No other reason was given for seeking to have the easement vacated.

At first in view of the swampy area in the northern one hundred feet of the easement and the only really good high land being found in the southern one hundred feet, the Borough staff had

indicated a lack of intention to vacate the easement. The owners of the forty acres protested the vacation of the easement. By Borough platting regulations if adjoining owners protested, vacation would not ordinarily be granted. Matanuska Susitna Borough Platting Regulation 16.15.035 (4) (App. N1)

The adjoining owner, William Bocast, protested the vacation of the easement. However, after certain members of the staff went out and conferred with Jean Williams going over the land with her the attitude changed. Strother, a staff member who made the report for the group, noted that the Williamses had planted a lawn in the road as a reason for vacating it. (App. G1-4) He did not note that in order to plant the lawn, they had destroyed the road. He confused the Jeep trails inside the forty acres with the road which was the passageway to the forty acres. This confusion continued throughout. The Borough even inserted copies of Jeep trails from the forty acres misrepresenting them as in the easement.

After continuing the matter for the benefit of the Williamses, a hearing was

finally held on June 20th, 1991, at which a video was shown prepared by the purchasers of the forty acres showing the deep water in the northern one hundred feet, the large stash pile blocking the entry into the forty acres and the destruction of the original road. The easement was so completely blocked and the road destroyed that it was necessary to go beyond the easement to reach the forty acres by a small trail. The platting board ruled on June 20, 1991 that the northern one hundred feet would be all that would remain and the southern one hundred feet would be vacated. They ruled, however, that superior access to what was available already should be supplied and that same would be the same as the road to the west, which was a good, well prepared, high, well ditched Mat Su Borough access road. (App. H3)

In view of this ruling, the owners of the forty acres did not appeal as if they would get access superior to what was destroyed by the Williamses or equal thereto, they would not be harmed. A secret meeting was held on the 15th of August, 1991, of which the owners of the

forty acres or of the adjoining acreage including Bocast, had no notice. Mrs. Williams had conferred with the staff director the day before. At that meeting the motion of the June 20th meeting was changed to say that it would not have to be the equivalent of what was to the west. Instead of the requirement of a road, there was substituted a requirement of a Jeep trail. (App. H6-16) No consideration was given to the problem of the swampy condition of the northerly one hundred feet. A Jeep trail was hurriedly completed in the swamp with a very thin layer of gravel and by the time the owners of the forty acres and the adjoining landowners learned of what had been done, the time to appeal had passed. The trail was hurriedly built at a time when the Borough was not in session and since the Borough was not in session, there was no Borough approval obtained as required. The southerly one hundred feet of the easement, the only part of same capable of sustaining a good Mat Su Borough access road in which the old road had been built but destroyed, was given to Duke and Jean Williams as a part of their property.

M. Ashley Dickerson, also known as Mahala Ashley Dickerson, filed a suit in the U.S. District Court for the District of Alaska, at Anchorage, alleging a violation of Fourteenth Amendment due process and equal protection provisions, taking of property without due process and violation of 43 U.S.C. 1983 rights. The suit was amended by the joinder therein of William Bocast, the adjoining neighbor. William and Mary Andrew, original subdividers, joined later based on the warranty of access given in the deed which they had given to the purchasers of the forty acres and Bocast, an adjoining landowner, being thwarted by the action of the platting board and the Williamses. (App. L1-11) The platting board held that not only would the purchasers of the forty acres be required to build a Mat Su Borough Road in the swamp where ditching would be impossible because of only water surrounding said trail and water already covering a large portion thereof, but that the purchasers of the forty acres would have to go back and redo the work which was done when the original Trail's End had been approved when the Andrews subdivided.

The requirement was inserted that they would have to bring the Trail's End up to Mat Su Borough Pioneer Access standards all of the way to the other main road which had been accepted and approved in the original subdividing by the Andrews. (App. 01)

All parties moved for summary judgment. The owners of the forty acres based their claim on their rights to access to the property as granted in the original sale to them and as originally approved by the Mat Su Borough in 1976, although subsequently taken away without due process of laws as required by the Fourteenth Amendment. They asserted that the property was actually taken from them as they were unable to access it. They also pointed out that by meetings with the Borough officials and the Williamses, as shown by the letter of Strother, as well as the subsequent meetings before and during August 15th, 1994, where a change had been made requiring that the road not be to the standard of that to the west but that only a Jeep trail would be required, there had been a denial of due process by lack of notice, a denial of equal

protection, a taking of property without due process of law, as well as a conspiracy, since the Williamses had met with the Borough official in charge the day before and had been apprised of the meeting and allowed to be heard at the meeting at which the change was made.

The U.S. District Court for the District of Alaska granted summary judgment in favor of all defendants, giving no credence to any of the documents filed by the purchasers of the forty acres, or adjoining land owners or even a video made before and after the construction showing the way in which the Jeep trail in the swamp was sinking and how it would be impossible to ever bring a road in that area up to Mat Su Borough standards. (App. A1-4; B1-3; C1-4; D1-3; E1-3; F1-3) Nowhere could there be seen a semblance of what had been the original access road. Proof was submitted that in less than a year, the Jeep trail in the swamp was almost one-third covered with water and was sinking. It was also pointed out that no maintenance was conducted on the alleged substitute Jeep trail whereas snow was removed all the way

to the door of the Williams house by the Borough. All purchasers of the forty acres are black professionals, Dickerson being an attorney, Steve Browner being a doctor, and Larry Card being a Superior Court Judge. Bocast and Mary and William Andrew are Caucasian but are asserting their rights to notice, equal protection and due process.

The lower court mistakenly referred to two separate easements and mistakenly held that the lower easement was the private easement in which the Jeep trail was constructed. There was really no distinction in what was what, as the whole two hundred feet are designated as easement, private to adjoining land owners and to the general public. (App. I1-2) The lower court further misunderstood the objection to the vacation of the easement and the construction of the Jeep trail. Plaintiffs could not prove the actual conversations which took place between the Borough members and Jean Williams and Duke Williams but did offer proof of the conversation which took place between Jean Williams and Linda Andrew Wilbur. No reason was given for disregarding this

conversation by either court except the appellate court inferred a significance to lack of witnesses to same.

ARGUMENT

I. DENIAL OF ACCESS TO PROPERTY BY THE COMBINED ACTS OF THE BOROUGH AND PRIVATE PERSONS HAS TAKEN AWAY PROPERTY WITHOUT DUE PROCESS OF LAW.

A jury could have chosen to believe Linda Wilbur rather than Jean Williams. One may properly assume that similar conversations took place between the platting board officials and Jean Williams. During recesses they left embracing each other and exchanging cigarettes. With no conspirator telling what conversations took place, only circumstantial evidence was available since after the visit with Strother, the act of putting a lawn in what had been the roadway was upheld by Strother. After the secret meeting of August 15th, a substitution of a Jeep trail for what had been accepted by the Borough as an MSB road resulted. The lower court mistakenly referred to the new road as being built in the private easement, whereas in fact, no private rights were affected, nor could be

affected without a condemnation suit which was not done.

A requirement of racial animus is set out. This was required in addition to the requirement of denial of equal protection and due process. Both courts substituted notice of the prior meetings for the right to be heard at the crucial meeting where the crucial changes were made. The rights of Bill Bocast to his right to be heard and due process were ignored by the court below for no particular reason whereas the rights of the purchasers of the forty acres were ignored because of the fact that both courts claim no racial animus was shown. Since Jean Williams had not hesitated to say to Linda Wilbur that she "just did not want a bunch of blacks back there," what proof is there that she did not say the same thing to members of the Borough or to Rick Brown, the administrator handling the matter, or other persons with legal authority? The members of the platting board congratulated the Williamses on having been such a wonderful group to work with. The platting board further made it impossible for the purchasers of the forty

acres to gain access thereto or be able to subdivide the acreage among themselves into the two ten acre tracts and one twenty acre tract by setting out a special requirement that the new subdividers go back and redo what had been accepted by the Borough, by the platting board, when William A. Andrew, the original subdivider, subdivided. The additional requirement was added that the purchasers of the forty acres would have to go back and bring Trail's End to a higher standard, all the way to the nearest intersection. The original dedication of two hundred feet had been required in the first place because of the impossibility of building a Matanuska Pioneer Access approved road in the swamp. Under Matanuska Platting Board Regulation 16.05.030, criminal penalties would result from attempts to subdivide without meeting these qualifications. (App. M1-3) The action of the Borough and the court has thrown everything back to where it was in '76 when the original easement was required, thus placing a heavier burden since the new owners are black. The Borough thus engaged in retroactive

legislation and destroyed a vested right.

On appeal to the United States Court of Appeals for the Ninth Circuit, the court mistakenly held that the entire easement was for use as a public right-of-way and that it may (emphasis added) have created a private easement in the same location for benefit of adjacent landowners, whereas the exact words in the easement are as follows:

> and WHEREAS, the Grantor wishes to grant access for ingress and egress over and through the above-described land for the benefit of all owners of property adjacent to said right of way hereinafter described, and to the public generally without limitation. (Emphasis added.)
>
> NOW THEREFORE, the grantor does hereby convey to the owners of property adjacent to and adjoining said below-described right of way, and to the public in general, for unlimited public use, a right of way over said land being described as follows:

(Full description omitted but includes property involved herein.) (Emphasis added.)

The statement that a Jeep trail providing access to the Dickerson property traversed the easement is erroneous inasmuch as a road had been constructed and used which had been accepted by the Borough in granting the waiver. (App. R1-4) This road was completely blocked and destroyed by the Williamses when they later bought the ten acres to the west subject to the easement.

The mistaken conclusion appears in both opinions also that the board members did not take formal action inasmuch as there was a change from an MSB road to a Jeep trail in that meeting. The statement that the Williamses built a gravel road in the easement is erroneous since all that was built was a Jeep trail in the mud. The decisions of both courts failed to mention the fact that the Jeep trail was built in a swamp and that the swampy condition was the cause of granting the easement in the first place.

The Ninth Circuit inferred that since Linda Andrew Wilbur did not claim that

anyone else was present when Jean Williams made the statement it had no significance. Both courts further held that it was all right for Borough officials to meet with one part of a controversy without notice to the other. No reason for the vacation of the high lands in order to give more footage to the Williamses was ever given and the only explanation for seeking the vacation of the easement was that given by Linda Andrew Wilbur when she stated that Jean Williams had said to her, "I just don't want a bunch of blacks back there." The full forty acres have stood inaccessible for five years prior to the attempt of the Williamses to get the easement vacated and the destruction by the Williamses of the road on the high land. Since the construction of the Jeep trail in the swamp, the land is still inaccessible and the forty acres have really been taken from the purchasers thereof without due process of law.

In the opinion of the appellate court, the attempt is made to show that despite lack of notice of the August 15th meeting by which a road was changed to a Jeep trail in the mud, the fact that there

had been notice of other meetings was sufficient. The court held "...There is no evidence that Borough officials were motivated by racial animus or were aware of any racial bias on the part of the Williamses..." (App. K6) There is no evidence of any governmental interest, only the interest of the Williamses is shown, only the desire of the Williamses to keep a bunch of blacks from back there.

The finding of the board and the conclusion of the court take into consideration none of the topography problems and would seem to conclude that the construction of a Jeep trail in the swamp is equivalent to the construction of the destroyed approved road in the high land. The appellate court concluded that there was no evidence that actions by Borough officials deprived Dickerson of access to her property or of economically viable use of her property, although the property remains totally inaccessible and has been totally inaccessible in view of the combined act of the Williamses and the Borough for nine years.

Lugar v. Edmondson Oil Company, 457 U.S. 922 (1982) and **Monell v. New York**

City Department of Social Services, 436 U.S. 658, 690 (1978) explain how state action operates. It is interesting how **Monell v. New York City Department of Social Services, supra**, demonstrates that cities are persons within the meaning of this statute. The Borough is likewise a person.

Hampton v. Hanrahan, 600 F.2d 600, 620 (7th Cir. 1979) contains an excellent definition of a civil conspiracy as follows:

> A civil conspiracy is a "combination of two or more persons acting in concert to commit an illegal act or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties "to inflict a wrong against or injury upon another," and "an overt act that results in damage." In order to prove the existence of a civil conspiracy, a plaintiff is not required to provide direct evidence of the agreement between the conspirators; "[c]

circumstantial evidence may provide adequate proof of conspiracy." **Hoffman-LaRoche, Inc. v. Greenberg**, 447 F.2d 872, 875 (7th Cir. 1971). See also **United States v. Varelli**, 407 F.2d 735, 741-42 (7th Cir. 1969). Absent the testimony of a coconspirator, it is unlikely that direct evidence of a conspiratorial agreement will exist. Thus, the question whether an agreement exists should not be taken from the jury in a civil conspiracy case so long as there is a possibility that the jury can "infer from the circumstances [that the alleged conspirators] had a 'meeting of minds' and thus reached an understanding" to achieve the conspiracy's objectives, **Adickes v. Kress & Co.**, 398 U.S. 144, 158-59.

A Plaintiff seeking redress need not prove that each participant in a conspiracy knew the "exact limits of the illegal

plan or the identity of all participants therein." **Hoffman-LaRoche, Inc. v. Greenberg, supra.** An express agreement among all the conspirators is not a necessary element of a civil conspiracy. The participants in the conspiracy must share the general conspiratorial objective, but they need not know all the details of the plan designed to achieve the objective or possess the same motives for desiring the intended conspiratorial result. To demonstrate the existence of a conspiratorial agreement, it simply must be shown that there was "a single plan, the essential nature and general scope of which [was] known to each person who is to be held responsible for its consequences." **Id.**

See also **Adickes v. S.H. Kress & Co., supra; Jones v. City of Chicago,** 856 F.2d 985 (7th Cir. 1988); **Rutledge v.**

Electric Hose & Rubber Co., 327 F. Supp. 1267, 1273-74 (C.D. Cal. 1971); **Commonwealth of Pennsylvania v. Local 542**, 347 F. Supp. 268 (E.D. Pa. 1972).

II. **THERE HAS BEEN A DENIAL OF EQUAL PROTECTION AND DUE PROCESS BY THE LOWER AND APPELLATE COURTS BY UPHOLDING THE IMPOSITION UPON SUBSEQUENT PURCHASERS WHO ARE BLACK AN OBLIGATION TO REDO WHAT HAD BEEN ACCEPTED FROM WHITE SUBDIVIDERS AT THE TIME OF ORIGINAL SUBDIVISION.**

When William and Mary Andrew subdivided, a two hundred foot easement was required in order to permit access to the separate forty acre tract being sold to the three black families. Access was made through an acceptable road on the high part of the land until five years later a ten acre strip separating the forty acres from the twenty acres owned by Bocast to the west was purchased by the Williamses who proceeded to block all access to the forty acres. The purchasers were making mortgage payments to William and Mary Andrew who had warranted them access to their property and received no

notice, however, of the request that the access they gave be taken away and the stable part of the two hundred feet reserved as an easement be given to the new purchasers who "did not want a bunch of blacks back there." No legitimate business reason was ever given for vacating the easement on the high land and throwing the access down into the swamp, other than to keep a "bunch of blacks from back there." By the action of the Borough in taking away the high land of the two hundred foot easement and rendering the property totally inaccessible, a virtual restrictive covenant has been enacted. The United States Supreme Court in the case of **Hurd, et al. v. Hodge, et al., Urciolo, et al. v. Same**, 68 S.Ct. 847, 334 U.S. 24 (1948), outlawed restrictive covenants based on race. The Borough has, by conspiring with the Williamses, reenacted restrictive covenants based on race in a subtle manner.

By the taking away of the higher one hundred feet of the two hundred foot right-of-way on the high land, leaving only a one hundred foot easement on the lower land and substituting a Jeep trail

in the swamp for the road which the parties had enjoyed on the high land, prior to advent of the Williamses, property has been taken without due process of law.

The record shows that prior to the advent of the Williamses, access over the high land by the use of a road had been available. The Williamses immediately piled debris, ditched the road and planted a lawn where a part of the road had been, thus completely keeping the purchasers of the forty acres from their property. When Strother, the Borough official, went out without notice to the owners of the forty acres and conferred with Mrs. Williams, he condoned this act by stating in his proposed findings as follows:

> "...For the existing accesses, the west one hundred fifty feet of the south one hundred feet of the public use easement does not seem to be in use by anyone and could easily be vacated without harming any access to anyone at this time, as Williamses currently have a lawn and have landscaped this area. ..."

The Williamses had prevented the use for five years. This bears out the contention of the petitioners that the Borough officials cooperated with the Williamses in denying the plaintiffs their access. The road had been used for five years before the Williamses purchased their ten acres. The act of the Williamses in planting and landscaping the road and placing a lawn there is condoned by this Borough official. By the time the Borough officials were examining the property in 1991, the Williamses had had the plaintiffs' blocked from access for five years, so it is understandable that it had not been used for some time. The Williamses seem to have thought that if they could establish a prescriptive right in the easement, the land would belong to them. The action of the Borough officials has given the Williamses that land and completely blocked access in the usable high lands, throwing access only into the unusable swamp.

III. THE APRIL 15 MEETING AMOUNTED TO A DENIAL OF EQUAL PROTECTION AND DUE PROCESS.

An examination of Appendix H1-16

shows that there were meetings of Borough officials and Mrs. Williams which resulted in stripping of constitutional rights from petitioners. Not only did Strother go out to the Williams' home and recommend that the use of a part of the easement for the Williams' lawn created by destruction of the road not be disturbed, but Rick Brown showed further collusion. An examination of the beginning of Appendix H1 reveals the following statement by Rick Brown:

> "Under old business there would be the Williams vacation clarification motion that they were trying to secure the file as somehow between yesterday when I met with Mrs. Williams and this morning, the files kind of got misplaced. So we're looking for that right now."

Having met with Mrs. Williams yesterday and Strother having met with her on a previous meeting, and her having notice of this meeting and again meeting without the presence of the others indicates a conspiracy.

It was admitted that the motion was that the road should be built to the

standard "at which the standard is at the west end of the north one hundred feet." They admitted some confusion since that was a pioneer access road. They wanted to change it and did change it. A platting board member continued that "...it was not a heavily travelled road, a Jeep trail should suffice, I don't see why they'd have to build a full road."

Yet no one could prove what kind of road they had before since the Williamses had destroyed it. Brown continued with "...equally constructed to what the Jeep trail was." This is totally different from equal that of the west. They do not realize however, that even a Jeep trail constructed in the swamp would be different from a Jeep trail constructed on high land. There was no admission of only a Jeep trail but all of the evidence presented was to the effect that it was a good, useable road. Mrs. Williams was allowed to speak and to set out that "she intended to give them a half-way decent road," (Appendix H14) she had been checking out gravel prices, that the road she would give be fixed 15 times better than what they had before, but what none

realized is that she destroyed what they had before. The board members proceeded to congratulate Mrs. Williams, saying she bent over backwards. She did not intend to have it a superior road like they had it stated before. "It will be much superior than what she had before. I just want you to understand that," she states, thus admitting that there was a definite change from a road to a Jeep trail.

Brown congratulated Mr. and Mrs. Williams on having been a joy to work with and that they have bent over backwards throughout the whole process and he thought they'd done a wonderful job. (App. H14-16)

IV. DENIAL OF EQUAL PROTECTION, TAKING PROPERTY WITHOUT DUE PROCESS AND 42 U.S.C. 1983 RIGHTS ARE AVAILABLE TO BLACK LITIGANTS DESPITE NO SHOWING OF THE DENIALS BEING MOTIVATED BY RACIAL ANIMUS.

Both courts have made the mistake of insisting that racial animus must be shown by black litigants in order for them to prove that they have been denied equal protection of the law or that they have had their property taken without due

process or there has been a conspiracy to deprive them of these rights.

Here there is evidence of racial animus by Jean Williams' voicing of her desire to keep a bunch of blacks from back there. Both courts have chosen to disregard same. The condonation of the destruction of the existing road and planting of a lawn thereon is shown by a Borough official. A special burden is being placed upon a black litigant since both courts have relied on an absence of racial animus. All persons should be entitled to the same rights guaranteed by the Fourteenth Amendment regardless of color. No legitimate business reason was ever given for condoning the destruction of the road to the property of petitioners, the taking away from them of the easement in the high land and the substitution for the road which they had enjoyed for five years by a Jeep trail. The doctrine of **McDonnell Douglas Corporation v. Green**, 1973, 411 U.S. 792, 36 L.Ed. 688, 93 S.Ct. 1817, is applicable here.

CONCLUSION

Property rights have been destroyed

without due process of law. Forty acres of land have been landlocked by a swamp on the north making them totally inaccessible. Partitioning by joint owners is impossible under criminal penalties. A valuable right to property ownership is destroyed as what was acceptable for the division of the land when it stood in white ownership has been declared void and black owners are given additional, more rigorous and impossible requirements. Nine years of deprivation should be considered.

DATED at Wasilla, Alaska this 31 day of August, 1994.

DICKERSON & GIBBONS, INC.

BY M. Ashley Dickerson

M. ASHLEY DICKERSON

No.

IN THE SUPREME COURT OF THE UNITED STATES

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Appendix to the
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Dickerson & Gibbons, Inc.
1330 East 15th Avenue
Anchorage, Alaska 99501
(907) 376-5539
ATTORNEYS FOR PETITIONER

APPENDIX

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IN THE UNITED STATES DISTRICT COURT

AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW and MARY ANDREW,

Plaintiffs,

vs.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Defendants.

Case No. A92-281 Civ

State of Alaska)
) ss
Third Judicial District)

AFFIDAVIT OF WILLIAM F. BOCAST
IN OPPOSITION
TO DEFENDANT BOROUGH'S MOTION

William F. Bocast being first duly sworn according to law deposes as follows:

1. I am one of the Plaintiffs herein. I have read the opposition to

motion for summary judgment for Plaintiffs and affidavit in favor of motion for summary judgment for Defendant Borough. I have examined the photographs submitted by the borough allegedly of the road used by Plaintiffs prior to its blockage by the Williamses. Unfortunately the photographs are of the jeep trails which circle the 40 acres, not of the easement road.

2. Before the easement was blocked by the Williamses when I bought my properties in 1985 from William and Mary Andrew, I would drive through the easement and along the jeep trails inside the 40 acres, without interruption. The easement was rendered impassable after the advent of the Williamses and the creation of berm piles preventing travel by us in the late eighties.

3. It does not take long for foliage to recreate itself in Alaska, so it is not surprising that the jeep trails within the forty acres grew up rapidly after the Jeep trails were blocked and the easement closed.

4. The Williamses did not hesitate to block accesses or try to block usage of adjoining land. They planted grass in the

easement between my ten acres to the west of them and when I told them that was my road easement Jeanie remarked that no one was going to put any road on her lawn. I note from the Memorandum shown to me by Mrs. Dickerson that was written by Strother, that he gave credence to the fact that the Williamses had planted a lawn in our private easement. The Williamses have ditched and piled berm and rubbish in our private easement in a manner which blocked our use of it. They should be required to remove this matter in order that we may once more use it.

I received only one notice of the proceedings to vacate the easement. I submitted an objection through Mrs. Dickerson, but never received any answer to same. I have read the minutes of the August 15th, 1991 meeting of which I had no notice. I had no notice of anything further except through Mrs. Dickerson.

Dated at Wasilla, Alaska this 26th day of August, 1992.

_____

WILLIAM F. BOCAST

Subscribed and Sworn to and Acknowledged

before me this ____ day of _____, 1992.

_____

Notary Public, State of Alaska
My Commission Expires: 5/30/95

This is to certify that a copy of this document was served by messenger on Allan E. Tesche, & Charles W. Ray Jr. U.S. Mail on the ___ day of _____,1992.

_____

IN THE UNITED STATES DISTRICT COURT

AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW and MARY ANDREW,

Plaintiffs,

vs.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Defendants.

Case No. A92-281 Civ

State of Alaska)
) SS
Third Judicial District)

AFFIDAVIT OF

LINDA ANDREW WILBUR

Linda Andrew Wilbur being first duly sworn according to law deposes as follows:

1. My name is Linda Andrew Wilbur. I am the wife of Albert Dale Wilbur and the daughter of William Andrew and Mary

Andrew. My parents were the original homesteaders of the lands involved herein.

2. My husband and I own and reside on one of the ten acre parcels close to the forty acres which my parents are selling to Mrs. Dickerson. The ten acre parcel on which the Williamses reside was the original ten acres conveyed to my brother Billy.

3. My father carefully planned the subdividing in order that all designated parcels would have access.

4. After the problem arose after the attempt by the Williamses to vacate the easement to the land being purchased by Mrs. Dickerson, Jean Williams and I had a discussion on the matter. I tried to explain to her why my dad had given the particular 200 foot easement. Her reply was in essence:

"Well I just don't want a bunch of Blacks back there, would you?"

Dated at Wasilla, Alaska this 5 day of June, 1992.

s/s

Linda Andrew Wilbur

Subscribed and sworn to before me this 5 day of June, 1992.

s/s

Notary Public, State of Alaska

My Commission Expires: 5/30/95

This is to certify that a copy
of this document was served on
Allan E. Tesche, Charles W. Ray Jr.
by U.S. Mail on the 19 day of June, 1992

s/s

Jodi M. Bourn

IN THE UNITED STATES DISTRICT COURT

AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW and MARY ANDREW,	)
Plaintiffs,	)
vs.	)
DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,	)
Defendants.	)

Case No. A92-281 Civ

State of Alaska)
) SS
Third Judicial District)

AFFIDAVIT OF JAKE MARQUEZ

Jake Marquez, being first duly sworn deposes as follows:

1. I am a resident of Wasilla, Alaska and am a road builder, landscaper and heavy equipment operator. I have been building roads in the Matanuska Valley

area for 10 years.

2. On the 24th day of May, 1992, I examined the road designated as an extension of Trails End. It is built in wetlands and is not built in any respect according to MatSu Borough specifications. I recall specifically when I was working for the company that built the roads in the Dawn to Dusk subdivision near this area, how strictly the inspections were and why none of those requirements were made of the builder of this road. The requirement for some type of fabric to prevent sinking in swampy land such as this was not met. The requirement as to inches of gravel was not met. The requirement as to width was not met. The requirement as to drainage was not met. There was nowhere for the road to drain as the swampland was all at the same elevation. There was no ditching at any point along the road.

3. At about midway the road, strips of it had sunk for a distance of between eight and twelve inches below the remainder of the road. It is obvious that some type of culvert should have been placed there to carry the water away. A

ditch has been dug leading from the high land above the road which is evidently designed to facilitate drainage from the higher land above onto this road.

4. Under no circumstances could this be called a MatSu Borough approved road. It is unbelievable that any inspector for the borough could have approved this road.

5. I climbed over trash and piles of berm up to the hill where I could enter upon the 40 acres adjoining this road. Once the road ended by curving into the swamp. A large pile of stumps and debris blocked entry onto the 40 acres and only by much climbing could the 40 acres be accessed. Only after the hill was ascended and piles of debris blocking entry had been scaled could I reach high solid land suitable for road building.

Dated at Wasilla, Alaska this 29 day of May, 1992.

S/S

Jake Marquez

Subscribed and Sworn to and Acknowledged before me this 29 day of May, 1992.

S/S

Notary Public, State of Alaska

My Commission Expires: 5/30/95

This is to certify that a copy

of this document was served on

Allen E. Teache, Charles W. Ray Jr.

U.S. Mail on the 19 day of June

1992.

S/S

Jodi M. Bourn

IN THE UNITED STATES DISTRICT COURT

AT ANCHORAGE

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Plaintiffs,

vs.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Defendants.

Case No. A92-281 Civ

State of Alaska)
) ss
Third Judicial District)

AFFIDAVIT OF JAMES BOYD CONNOLLY
IN OPPOSITION
TO DEFENDANT BOROUGH'S MOTION

James Boyd Connolly being first duly sworn according to law deposes as follows:

1. My name is James Boyd Connolly and I am the owner of property across the

swamp from lots A18, and A10. I am the owner of certain heavy equipment. I was vaguely aware of the purchase by the Cards, Dickersons and Browners of the forty acres, but was unaware of the exact metes and bounds of the easement now in dispute.

2. Shortly after the purchase in 1986 by the Williamses, but before 1990, I was approached by the Williamses to do certain work for them. They had me to clear a spot on what I now know to be the forty acres belonging to the Dickersons, Browners and Cards upon which their boat was placed.

3. They had me to push certain berm piles and rubbish from one spot to another. I was completely following their instructions without the use of any plats or any maps. As one pile grew high and thick I asked for specific information as to where I was to put it. They said to put it "there", pointing to the spot where the "stash" pile which now blocks the entry way to the forty acres stands. At the time that I did this I had no idea that I was blocking an easement which was for the benefit of the adjoining and

abutting owners and the public, including myself.

Dated at Wasilla, Alaska this _____ day of August, 1992.

_____

James Boyd Conley

Subscribed and Sworn to and Acknowledged before me this ____ day of _____, 1992.

_____

Notary Public, State of Alaska

My Commission Expires: 5/30/95

This is to certify that a copy of this document was served by messenger on Allan E. Tesche, & Charles W. Ray Jr. U.S. Mail on the ___ day of _____,1992.

_____

IN THE UNITED STATES DISTRICT COURT

AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW and MARY ANDREW,

Plaintiffs,

vs.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Defendants.

Case No. A92-281 Civ

State of Alaska)
) ss
Third Judicial District)

AFFIDAVIT OF MICHAEL J. HEINZ

Michael J. Heinz, being first duly sworn deposes as follows:

I am a licensed surveyor for the state of Alaska. I am familiar with the attempts of M. Ashley Dickerson to obtain access to forty acres off Andrea and

Trails End Road. On the 9th Day of May, 1992 I made certain measurements on the ground to locate the road constructed to replace her destroyed access.

I found that the replacement road was started 34 feet further North toward the swamp from the test hole one indicated on the map as drawn by Mr. Dollarhide. The road then curves to a point where it is 20 feet from test hole two. The last test hole lies within the road and is the one that shows actual water at around 5 1/2 feet.

Dated at Wasilla, Alaska this ____ day of May, 1992.

_____

Michael J. Heinz

Subscribed and Sworn to and Acknowledged before me this ____ day of May, 1992.

_____

Notary Public, State of Alaska
My Commission Expires: 5/30/95

Appendix E2

This is to certify that a copy
of this document was served on
Allan E. Tesche, Charles W. Ray Jr.
U.S. Mail on the ____ day of May,
1992.

_____

Jodi M. Bourn

IN THE UNITED STATES DISTRICT COURT

AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW and MARY ANDREW,

Plaintiffs,

vs.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Defendants.

Case No. A92-281 Civ

State of Alaska)
) SS
Third Judicial District)

AFFIDAVIT OF

ALBERT DALE WILBUR

Albert Dale Wilbur, being first duly sworn deposes as follows:

1. My name is Albert Dale Wilbur and I have resided in the area of the properties involved in this lawsuit for 15

years. I am married to Linda Andrew Wilbur and own ten acres adjoining the Bocast acreage off Andrea Drive. When my brother-in-law, Billie Andrew, lived at what is now the Williams property there was no problem with accessing the jeep trail onto the forty acres. The access was on high solid ground and joined the jeep trail.

2. I helped my Father-in-law, William A. Andrew, make certain measurements as best we could in the snow that covered the area when he was in Alaska in the month of February, 1992. We estimated the new, substitute road to have been started about 30 feet further into the swamp than test hole one as shown on the map of Dollarhide, the engineer, as presented to the Platting Board. I have later learned that the distance according to the surveyor, Michael Heinz, was around 34 feet.

3. On or about the 3rd day of May 1992, I examined the substitute road constructed to replace the previous access. It is built in a swamp. There is no ditching for drainage. The occupants of the property above the road have dug a

drainage ditch from their property which drains into the substitute road. Water was standing at that and at another point on the road. I dug into the layer of gravel and measured it with my finger finding it to be only four inches deep. The road was sinking and was really a giant sponge. It touches the 40 acre tract in low swamp. To access the jeep trail, which circles the 40 acres, one must climb up on foot, through a deep gulley (sic) and climb over a large stack of stumps and debris. No wheeled surface vehicle can traverse this.

Dated at Wasilla, Alaska this 4 day of June, 1992.

S/S

Albert Dale Wilbur

Subscribed and Sworn to before me this 4 day of June, 1992.

S/S

Notary Public, State of Alaska

My Commission Expires: 5/30/95

Matanuska-Susitna Borough
350 EAST DAHLIA AVE, PALMER,
ALASKA 99645-6488 • PHONE 745-9822
PUBLIC WORKS DEPARTMENT

MEMORANDUM

DATE: May 17, 1991
TO: Paul Hulbert, Platting Technician
FROM: George Strother, Deputy Director of Engineering S/S
SUBJ: Williams Vacation

On Thursday, May 16, 1991, the subject Public Easement Vacation was inspected by Paul Hulbert of Platting and myself. We met Mrs. Williams on site. The weather was occasional sun with a heavy rainshower midway through the walkthrough. The 200' easement southern boundary was marked with survey redtop lathe and the property line along the easement between Williams' and Dickerson's was cleared and lathed. We were able to walk the entire property line just with normal office shoes without any excessive wetness.

Trailridge Road looks like the original

overburden was pushed along the northern lot line of Williams' property into the black spruce. Between the black spruce is heavy moss with standing water visible occasionally between the moss clumps. The accesses east to Dickerson's property do not look like they have been used for many years by any wheeled vehicle. The southern access, which has Williams' boat on Dickerson's property is south of the 200' easement and is not accessible through the 200' easement. The northern jeep trail has some small trees, dirt, and stumps pushed from the Williams' over the property line, partially blocking the right-of-way. Mrs. Williams stated that she could have the boat and encroaching overburden moved back to her property. This access is still accessible by foot and possibly by 4-wheel drive vehicle. We did not have a 4-wheel drive vehicle and did not try to drive off of the improved roads and driveways. Based on the lathe line, the jeep trail seems to be south of the 200' easement and is not even within the 200' easement.

From the Borough topo map and field

investigation, the edge of the tree line seems to follow approximately the north boundary line of the western portion of the 40 acre parcel to the east. The spruce tree line north of Williams' is well to the north, past Williams' property and the same for the immediate area east of Williams'.

Pending the soil investigation by Floyd Dollerhide, P.E., the practicality of constructing a road in the north 100' of Williams' property can't be determined. But from initial field walkthrough, I do not see any great difficulty in building the road in the north of the 200' public use easement. For the existing accesses, the western 150' of the south 100' of the public use easement does not seem to be in use by anyone and could easily be vacated without harming any access to anyone at this time, as Williams' currently have a lawn and have landscaped this area. A further compromise might be to vacate the west 250' of the south 100' at this time leaving the east 80'+/-, the south 100' as temporary access easement until Trailridge Road is extended through on the north

100'.

So as to not block the access, I recommend that a surveyed as-built, showing the access alignment be provided and agreed to by all parties. With a surveyed as-built of the trail alignments and tree lines, and an agreement between the surveyors, the facts on the ground can be presented to the Platting Board without any disputes on facts.

Please distribute copies of this memo to both sides.

GS:vr

Brown: The second point under Old Business, Mr. Chairman, is, ah, the Williams' vacation clarification of motion. We're trying to secure the file. Somehow between yesterday, when I met with Ms. Williams, and this morning the files kind of got misplaced. (Emphasis added.) So we're looking for that right now.

Strother: Rick, I have a copy of the notification of action and the minutes. Will that help you?

Brown: Thank you, George. If you'll recall at the June 20th platting board meeting, Mr. & Mrs. Williams came forward and requested to vacate the southern 100' of a 200' public use easement across their property. As a condition of approval, staff recommended that the jeep trail be relocated to the northern 100'. Along the southern boundary, along where Mr. Dolerhide had dug his test holes to prove that a borough

standard road could be built in that area.

Staff recommendation in that regard, was provide alternate, uninterrupted, equally constructed access through the subject property within the 100' remainder easement prior to recordation of the vacation resolution. That is condition of approval number 1. Staff had recommended that the platting board had carried forward with that.

When we got to the motion, and I'd like to go ahead and read the motion, Mr. Campbell moved to accept the Williams vacation and staff recommendations one through four with additional findings as indicated on page 27, findings one through seven. Staff had seven findings listed there. Adding finding number eight, a registered engineer licensed with the State of Alaska, stated that a borough approved road

could be built within the north 100' of the existing 200' public use easement and that the road should be built to the standard at which the standard is at the west end of the north 100'.

This has added some confusion. The intent of my recommendations were to have a jeep trail to replace the jeep trail that was there. However, there's some confusion with, on staffs part, department of public works believes, as I understand it, it should be a pioneer access standard road. Construction permit has not been issued yet, it's been requested. DPW will not approve anything other than a pioneer access standard road. With the confusion that there is and the misunderstanding. So what we need is a clarification from the board. Mr. Campbell.

Campbell: Mr. Chairman.

Tucker: Yes.

Campbell: I think the intent of that was

that basically the whole thing started just by vacation of a section line easement. Wasn't it?

Hersch-
bach: No, the south 200...

Brown: 200' PUE

Campbell: ...a portion of, than (sic). Okay? Is that right? Okay a portion of the section line easement.

Scorup: No it's not a section line.

Brown: Public use.

Tucker: Public use easement. Yeah.

Campbell: There's a jeep trail there. That doesn't meet (inaudible) standard. Is that correct?

Tucker: Probably not to any standard.

Hersch-
bach: No.

Campbell: And that (inaudible) the access (inaudible) used for. at the northwest corner, is where the road, I guess is, improved better than what the jeep trail is. But remaining was, or to my way of thinking, anyway, even if I didn't say it right, was that,

I don't think that they should have to build a road to the standard if that's what they've been using through the property anyway. I, ah, also do not believe that they just should throw some dirt in there. And it can't be built upon or through time the increase to a higher level of (inaudible), but not at this time. In other words, the intent was, doesn't have to be pioneer access at this time. Because, what they were trying is to give at least the access they had (inaudible). But if they would put gravel base down that it could be built on to pioneer access standard at a later date or to whatever standard that might as the area developed and as needed. (inaudible) that is the intent of what I was trying to get across.

I don't know if that's what the board understood too. But that's what...

Tucker: That's what I thought you meant, Paul. George?

Strother: Because at the west boundary of the property, I think it's Tails End Road, it's almost to pioneer access standards (inaudible) cul-de-sac and turn around and as the motion said to that quality of road at the west side of the property, their (sic) assuming you're talking about the William's property. To want to have a, one lane say 12' wide with a gravel topping so (inaudible) to do. So we're getting (inaudible) strip. Some (inaudible) guy over there just (inaudible) level with (inaudible) drive through up to the top of the existing grounds. (inaudible) the driveway take (inaudible) access or...

Hersch-
bach: Mr. Chairman, I think the intent of this was just to put a substitute. The people that have the adjoining property, stated that they go in there and

pick berries and cut wood. So it's not a heavily traveled road there, by any means. And I think, you know, a jeep trail or whatever, they've been somewhat happy with that. So I don't see why they should have to build a full road.

Colberg: Mr. Chairman.

Tucker: Yes?

Colberg: I think it's unfortunate the wording that was included in this regarding the west end of the (inaudible) trail. But the purpose in my estimation on the action that we took was to move the current access north essentially with equivalent or better road. And ah, I'm not sure if pioneer road is the category that we need to put this in. Because it is essentially a trail, currently, and if we move it and upgrade it because it needs to be moved, (inaudible) I don't see what (inaudible) we need to move it up to some higher, (inaudible)

higher standard than currently is where, where it is. But I think that what Mr. Campbell is saying is germane in that it should be installed in such a manner that if it does want to be improved at a future time it can be done to it.

Brown: Mr. Chairman, than (sic) too, again staff recommendation, or platting board condition of approval now is to provide alternate, uninterrupted, equally constructed access. And what we're talking about is equally constructed to what the jeep trail was.

Tucker: Yes. Yeah, that's what I thought too. You known, and of course I've never been on that trail and I, but, a, you take the lowest classification of road that we have is probably far better than that jeep trail. (Emphasis added.) Like you say, pioneer access road would probably be a much better road than this jeep trail, I don't

know that. <u>But probably, you see, since it has no standard at all</u>. (Emphasis added.) I mean you go out between the trees and zig-zag around and get down through there and say this is it. And, but that isn't the kind of road you're talking about across here. Especially according to the standards, the gravel, and all of that, so wide, ditches and everything else, you're not talking jeep trail. Isn't that right? We don't have classification, that...

Colberg: Mr. Chairman?

Tucker: Yes? John.

Colberg: (inaudible) wonder if it's in order to ah, re-do that motion eliminating the equivalency on the road bed as it starts out on the west...

Brown: Mr. Chairman? I would caution the board against making the motion on this since, I think that if a motion were to be given than (sic) we would have

to go back and make sure that proper public notice was given, that all parties who needed to receive public notice did so. I think a clarification on the boards' (sic) part would be all we would need.

Campbell: Mr. Chairman? Ah, the staff asked for clarification of the motion, I tried to clarify exactly what the motion is. The person that is going to, to whatever you want to say, as to inspect the road to see that it meets the equivalent or better is going to be her neighbor. Now she put the alternate access in, that neighbor is going to be there to make sure that, that road is going to be as equal as what they've been driving on or better. Or you're going to hear, you're going to have them, sitting right there at (inaudible). So I've clarified that I don't think you need to meet pioneer access standards. But, I still think it needs to

be made sure that it's located within that easement and it needs to have, I think, some kind of a gravel base.

Williams: May I say something?

Tucker: Sure, go ahead.

Williams: Okay, I've already checked out the gravel prices and what it's going to cost and this is what my intentions are, and I did this last night with Quality Sand & Gravel, his name is John Waters, if you need verification.

What I had intended on doing was give Mrs. Dickerson and Mr. Card a halfway decent road. I am not an ogre, by any means, and I certainly wouldn't give them what they had before. It would be, probably 15 times better than what they had before. My intent, and I've already got the prices and everything, is to make it 12 feet wide for you people, 330' long with taking the organics off the top. Now I don't know

if there's a foot of organics that have to come off the top or not. I would have to look at that again. But my intent is to put fill dirt in there, four inches of pit-run, two inches of a high standard gravel. (Emphasis added.) Would that be suitable for you people?

Tucker: Paul.

Campbell: I think she's bent over backwards, and not only that, I think your definition of taking off the organics (inaudible) process which you need. Probably skimming off the top, that top...(inaudible).

Williams: That's what I mean.

Campbell: The weeds and everything, mostly organic, and that might be that deep.

Williams: Oh, excuse me, well. Don't pay any attention to me.

Campbell: So anyway, I just want to make sure (inaudible) so there's no mix up on that. I know exactly what, what I think you mean. You need to clear all that,

topsoil...(several people speaking at once).

Williams: Right. What I wanted the borough to understand was I wasn't by any means trying to slight her or take away, or make it, or not be, not to have it a superior road like you had stated before. It will be much superior than what she had before. (Emphasis added.) I just want you to understand that.

Strother: Mr. Chairman?

Tucker: Yes?

Strother: So, so I can get it clarified since public works is going to have to approve this, will be taking off the root mat and then six inches of pit run (emphasis added), I think is all that would be needed. I don't think we have to put in four inches of one type and two inches of another...(inaudible)

Williams: It would be cheaper, I just didn't want any complaints. I realize she's going to come out

there and look at it. I just didn't want anybody here to think I was going back on anything I, you know, previously said.

Campbell: Mr. Chairman I think (inaudible) more than fair, and I think you should go with the pit-run and don't, 'cause the other stuff is going to cost you more (emphasis added), I think and then pit run (inaudible) going to do it (inaudible) probably help to set it up better and then (inaudible) is upgraded to some standard than you (inaudible)

Williams: Okay. Well as you see I'm trying to please everybody. So I don't want any, and once this is done and once it is approved I would appreciate if someone would write in there that I won't be back in here again.

Brown: Mr. Chairman, Mr. & Mrs. Williams have both been a joy to work with in this and they have bent over backwards throughout the whole process. I think

they've done a wonderful job. (Emphasis added.)

Strother: Mr. Chairman"

Tucker: Yes.

Strother: Maybe as a clarification to go, Rick, (inaudible) still have to change the original motion. The original motion says, at the west end of the property, could you define which property, maybe we should say of the property of the (inaudible) (emphasis added)

Campbell: But the bottom line is they're going to get access and it's going to be as good or better...

Williams: Right. But it is going to their property line. (Emphasis added.) Okay, thank you very much.

Colberg: Mr. Chairman?

Tucker: Yes?

Colberg: I think that is a terrific idea to interpret the west end as being defined on the neighbors' property rather than on the original (inaudible) portion of the road. (Emphasis added.)

Tucker: Okay. All right.

Easley: Moving along.

Tucker: Yes sir. We have ah, down to public hearings and preliminary... Have any consent items?

The easement was set forth in the Record at 23-58 as follows:

> and WHEREAS, the Grantor wishes to grant access for ingress and egress over and through the above-described land for the benefit of all owners of property adjacent to said right of way hereinafter described, and to the public generally without limitation. (Emphasis added.)
>
> NOW THEREFORE, the grantor does hereby convey to the owners of property adjacent to and adjoining said below-described right of way, and to the public in general, for unlimited public use, a right of way over said land being described as follows: (Full description omitted but includes property involved herein.) (Emphasis added.)
>
> . . .
>
> FURTHERMORE, this easement shall run with the land, regardless of how such may be subdivided and shall lie binding

upon and inure to the benefit of the heirs, representatives, successors and assigns of the Grantor and its successors, at its election, may commence construction of a road and maintenance of same along and within said right of way.

FILED
MAR 04 1993
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
BY S/S DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

M. ASHLEY DICKERSON a/k/a MAHALA ASHLEY DICKERSON, and WILLIAM F. BOCAST, WILLIAM ANDREW, and MARY ANDREW,

Plaintiffs,

v.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Defendants.

Case No. A92-281 Civil

ORDER

This dispute concerns the Matanuska-Susitna Borough's ("Matsu's" or "the Borough's") decision to vacate a portion of a public easement that spans the width

of property owned by defendants Duke and Jean Williams ("the Williamses"). Plaintiff M. Ashley Dickerson ("Dickerson") owns adjacent land benefitted by the easement, in common with co-tenants Larry Card and Steve Browner, whose interests she represents in this matter. Dickerson, Card and Browner are black, African-Americans; all other persons involved in the dispute are not black. Plaintiff Bocast owns the land adjacent to the other side of the Williamses' property, and is also benefitted by the easement. William and Mary Andrew ("the Andrews") are the former owners of the entire Dickerson/Williams/Bocast tract, and currently hold a security interest on at least the Dickerson property.

The property in question is depicted in Exhibit B to Docket No. 23. At the northernmost end of the Williamses' property is a 100-foot-private easement, running east-west; and adjacent to that easement on the southern side of the easement is the former public easement, which is also 100 feet wide. The jeep trail that ran through the property since

the time that the property was wholly owned by the Andrews was located on what became the public part of the easement. The public easement is approximately five feet higher in elevation than the private easement, and Dickerson complains that the land over which the private easement is located is swampland and is substantially less suitable for road construction than the land over which the public easement was located.

The Williamses petitioned the Borough's Platting Board ("the Board") to vacate the public easement. Dickerson alleges that this action was motivated by the Williamses' racial prejudice, and has submitted the affidavit of Linda Wilbur, the Andrews' daughter, to that effect. Notice of all but one of the Board meetings was given to Dickerson, and hearings were held. The request to vacate the easement was ultimately approved by the Board, subject to the condition that the Williamses construct an alternate road through the remaining private easement. Dickerson alleges that this road provides inadequate substitute access because it was not adequately constructed for the

terrain.

Plaintiffs bring this action in federal court, alleging denial of their Fourteenth Amendment rights. Oral argument has been requested in this case. Oral argument may be dispensed with when the facts and legal arguments in a case are adequately presented in the briefs and the record and the decision-making process would not be significantly aided by oral argument. Fed. R. App. P. 34(a)(3); Fed. R. Civ. P. 78; Local General Rule 5(C). I find that the facts and legal arguments in this case have been adequately briefed and therefore deny the request for oral argument.

DISCUSSION

I. PLAINTIFFS HAVE NOT MET THEIR BURDEN OF PROOF WITH RESPECT TO THEIR FEDERAL CIVIL RIGHTS CLAIM.

Dickerson alleges that there was a civil rights conspiracy pursuant to 42 U.S.C. §§ 1983 and 1985. To find that a private defendant has violated 42 U.S.C. § 1983, the plaintiff must show: (1) an actual deprivation of her rights, (2)

under color of law.[1] See, e.g., Adickes v. S.H. Kress and Co., 398 U.S. 144, 150 (1970). To find that the state action requirement has been met in the instant case, in which the only evidence of racial discrimination involves a statement by a private party about another private party and the action complained of was undertaken by government officials, a conspiracy between the private and public actors must be shown. See id. at 148.

To prevail in her motion for summary judgment and in her allegation that she was deprived of her civil rights by defendants' § 1983 conspiracy, and to defeat Matsu's cross-motion for summary judgment on that issue, Dickerson's evidentiary submissions must satisfy the standard of proof for summary judgment actions established by the United States Supreme Court in Matsushita Elec. Indus.

[1]A purely private conspiracy can also be the basis for a §1985 action if it involves "class-based invidiously discriminatory animus," and a deprivation of the equal enjoyment of rights secured by the law to all. Griffin v. Breckenridge, 403 U.S. 88, 102 (1971) (case involving the right to travel on federal and state highways).

Corp. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986), and Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Although prior to the decisions in these cases, the Supreme Court indicated that a civil rights plaintiff could defeat her opponent's motion for summary judgment merely by alleging facts that her opponent had not sufficiently disproved, see Adickes, 398 U.S. at 157, the three 1986 Supreme Court decisions clarified this standard of proof. In Celotex, 477 U.S. at 325, the Court stated that the burden on the moving party was to point out to the court that there is an absence of evidence to support the non-moving party's case. Furthermore, in Liberty, 477 U.S. at 252, the Court stated:

> The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be enough evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably

> asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict.

This determination will vary depending upon the law involved, as the judge must "bear in mind the actual quantum and quantity of proof necessary to support liability," in order to determine whether the evidence is of "insufficient caliber or quality" as to preclude a trial on the merits. Id. at 266. If the factual context of a claim makes the non-moving party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary. Matsushita, 475 U.S. at 587.

In T.W. Elec. Service, Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 632 (9th Cir. 1987), the Ninth Circuit held trade association members to a high standard in granting summary judgment to defendants in a non-discrimination conspiracy case. The court held that with respect to antitrust cases, antitrust laws limit the range of permissible inferences that may be derived from ambiguous evidence. Quoting Monsanto

Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 764, reh'g denied, 466 U.S. 994 (1984), the court stated that evidence, "as consistent with permissible competition as with illegal conspiracy does not, standing alone, support an inference of antitrust conspiracy." Id. Rather, the plaintiffs were required to present evidence tending to exclude the possibility that conspirators acted independently. Id. This holding can probably be interpreted as clarifying the standard in Matsushita to read that where the factual context of a claim makes the non-moving party's claim only as plausible as alternate interpretations of the situation, that party must come forward with more persuasive evidence than would otherwise be necessary.

Other Ninth Circuit decisions have held civil rights plaintiffs to a similarly high standard of proof in granting their opponents' summary judgment motions. In Coverdell v. Department of Social and Health Services, 834 F.2d 758 (9th Cir. 1987), a mother whose parental rights to a child were terminated brought suit against child protective service

workers and a foster mother under 42 U.S.C. § 1985, alleging that their actions were predicated on the belief that she was mentally handicapped. The court stated that the foster mother had met her burden for summary judgment merely by pointing out to the court the absence of any evidence that her actions had been motivated by racial or other class-based animus. Id. at 769. The burden then shifted to the plaintiff to come forward with evidence that would raise a genuine issue concerning the foster mother's motivation. Id.; cf. Klingele v. Eikenbery, 849 F.2d 409 (9th Cir. 1988) (in holding that summary judgment was inappropriate where relevant evidence remained to be discovered, the nonmoving party was assigned the burden of showing what material facts would be discovered that would preclude summary judgment).

In the instant case, plaintiffs have the burden of proving that a conspiracy existed between the private defendants, Duke and Jeanne (sic) Williams, and the Matanuska-Susitna Borough. The only evidence plaintiffs submit of a racially-motivated statement by any party is the

statement of Jean Williams, reported in the affidavit of Linda Wilbur, to the effect that the reason she sought to have the easement vacated was that she did not want black people living next door to her. Dickerson connects this statement to the actions of the Borough by alleging that each subsequent Board meeting held at the Williamses' request was increasingly hostile to Dickerson's position. In addition, Dickerson alleges that the Borough's road maintenance included snow removal services for the road leading to and including the Williamses' driveway, but that this snow removal was not done on the replacement road through the private easement that Dickerson and the others were expected to use. Dickerson also alleges that although she received notice of the initial Board meetings, she was not notified of the final meeting on August 15, 1991, at which the specifications for the replacement access road were discussed. Furthermore, she states that the construction of the alternate gravel road on the Williamses' property was conducted in secret. Finally, Dickerson alleges that a Borough official went with

Jean Williams to conduct on-sight observations of the land for the purpose of making recommendations without notification to the plaintiffs.

Dickerson does not suggest that further discovery will allow her to produce evidence that the secret meeting and its outcome was motivated by racial animus. The transcript of the meeting does not suggest that racial bias was involved in the decision-making process. All of Dickerson's allegations, if true, may indicate that the Borough possessed some hostility towards Dickerson and her co-owners, but they do not offer support for the inference that this hostility was motivated by racial prejudice sufficient to permit reasonable jurors to find for the plaintiff by a preponderance of the evidence. See Liberty, 477 U.S. at 252. I conclude that plaintiffs have failed to meet their burden of proof as to this issue.

II. PLAINTIFFS' PROCEDURAL DUE PROCESS CLAIMS.

Dickerson argues that she was denied procedural due process because although she was given notice of all prior Board

meetings concerning the easements, she was not given notice of the meeting held on August 15, 1991, during which she asserts that the Board relieved the Williamses of the requirement that they comply with Borough regulation 16.15.035 in constructing an alternate access road over the private easement on their property. Dickerson argues that this treatment constitutes a taking of property without due process of law. Plaintiffs also assert that the Andrews, who are the record holders of title to the property, were not given personal notice of the Board meetings. However, publication notice was given; and it can be presumed from the fact that William Andrew offered to testify at one hearing that he had actual notice of at least some of the proceedings.

Dickerson's extensive participation in the Board's proceedings prior to the August 15, 1991, meeting as a representative of the other plaintiffs' interests suggests adequate notice of these proceedings and an adequate opportunity to be heard. With respect to the August 15, 1991, meeting, the

affidavit of Rick Brown, a member of the Board, states that the reason Dickerson was not notified of that meeting was that the meeting had been requested by the Borough's staff and was aimed merely at clarifying the requirements for the alternate road that had been proposed at the prior meeting. The transcript of that meeting is not inconsistent with this explanation. The purpose of notice and an opportunity to be heard is to give a participant an opportunity to make her views known. A review of the entire record establishes that Dickerson had made her views known. Thus, I conclude that plaintiffs' procedural due process claims have not been sufficiently substantiated to defeat the Borough's summary judgment motion.

In reaching these conclusions, I address only the plaintiffs' federal Constitutional claims under 42 U.S.C. §§ 1983 and 1985. Plaintiffs may proceed to seek proper resolution of their state claims in state court. See 28 U.S.C. § 1367(c). This is not a federal case.

IT IS THEREFORE ORDERED:

Plaintiffs' motion for partial

summary judgment at **Docket No. 12** is **DENIED**, and the Borough's cross-motion for summary judgment at **Docket No. 23** is **GRANTED IN PART**, with respect to the issue of whether plaintiffs have presented a tenable 42 U.S.C. § 1983 claim, and by extension a § 1985 claim, regarding substantive or a procedural due process under the Fourteenth Amendment to the United States Constitution. Defendants' motion for summary judgment on all state claims is **DENIED WITHOUT PREJUDICE** to the bringing of those claims in state court. This case is **DISMISSED WITHOUT PREJUDICE** as to the plaintiffs' state law claims, thereby dispensing with the need to resolve all subsequently-filed motions addressing state claims.

DATED at Anchorage, Alaska this 3 day of March, 1993,

S/S

HONORABLE JAMES K. SINGLETON, JR.
United States District Court

CC:

A. Dickerson
A. Tesche
C. RAY

FILED
JUL 22 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

M. ASHLEY DICKERSON, aka Mahala Ashley Dickerson; WILLIAM F. BOCAST; WILLIAM ANDREW; MARY ANDREW,	)	No. 93-35237
	)	D.C. No. CV-92-281-JKS
	)	MEMORANDUM*
Plaintiffs-Appellants,	)	
v.	)	
DUKE WILLIAMS; JEAN WILLIAMS; MATANUSKA SUSITNA BOROUGH,	)	
Defendants-Appellees.	)	

Appeal from the
United States District Court

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

for the District of Alaska
James K. Singleton,
District Judge Presiding
Submitted June 10, 1994**
Seattle, Washington

Before: POOLE, BRUNETTI, and KLEINFELD, Circuit Judges.

I.

In 1976, William and Mary Andrew subdivided certain real property located in the Matanuska-Susitna Borough in Alaska. M. Ashley Dickerson, Larry Card, and Steven Browner (collectively, "Dickerson"; M. Ashley Dickerson is referred to as Ms. Dickerson) purchased a forty-acre parcel from the Andrews. Ms. Dickerson, Mr. Card, and Mr. Browner are African Americans. All other persons involved in this dispute are not black.

Jean and Duke Williams purchased the ten-acre parcel immediately to the west of the Dickerson property. William F. Bocast owns two ten-acre parcels to the west of the Williams parcel. When Jean and Duke

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**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); Circuit Rule 34-4.

Williams purchased their property, it contained an easement on the north end of the parcel that ran the width of the parcel from east to west and extended 200 feet south from the north property line. The entire easement was for use as a public right-of-way. The instrument granting the easement may also have created a private easement in the same location for the benefit of adjacent landowners. A jeep trail providing access to the Dickerson property traversed the easement. Part of the trail crossed over onto a portion of the Williams property not subject to the easement.

In November 1990, the Williamses applied to the Borough's Platting Board to vacate a portion of the public easement. The Platting Board held several noticed public hearings in 1991. Ms. Dickerson participated in these meetings and submitted written statements. On June 20, 1991, the Board passed a resolution approving vacation of the southern 100-foot portion of the easement contingent on the Williamses constructing an equivalent access road in the northern 100-foot portion of the easement. Dickerson did

not receive notice of a Platting Board meeting held on August 15, 1991, at which board members discussed clarifications of the June 20, 1991 resolution but did not take formal action on the Williamses' application. The Williamses participated in that meeting. After the Williamses built a gravel road in the northern 100-foot portion of the easement, the vacation of the southern 100-foot portion was recorded. The resolution passed by the Platting Board did not purport to affect any private easement that landowners adjacent to the Williams property might hold.

Dickerson, Bocast, and William and Mary Andrew filed suit in federal district court alleging that the Matanuska-Susitna Borough, together with Jean and Duke Williams, violated their rights under the Fifth and Fourteenth Amendments to the United States Constitution and unlawfully conspired to deprive them of those rights under 42 U.S.C. § 1983. The plaintiffs also alleged state law claims. The district court granted defendants' motion for summary judgment on the federal claims and dismissed the state claims without

prejudice. We affirm.

II.

The plaintiffs have not asserted a viable federal constitutional claim against the Williamses because they have not shown that the Williamses acted under color of law. See Adickes v. Kress & Co., 398 U.S. 144, 150 (1970); Collins v. Womancare, 878 F.2d 1145, 1147 (9th Cir. 1989), cert. denied, 493 U.S. 1056 (1990). Plaintiffs claim that racial bias motivated the Williamses' application to vacate the easement and that the Williamses participated in a conspiracy with Borough officials to deprive them of constitutional rights. As evidence of racial bias, they presented the affidavit of Linda Andrew Wilbur, daughter of William and Mary Andrew, stating that Jean Williams said she did not "want a bunch of blacks back there." Wilbur did not claim that anyone else was present when Jean Williams allegedly made this statement. Plaintiffs also claim that the Williamses blocked access to Dickerson's property by piling berm and trash on the jeep trail at the property line, and that the Borough condoned this. They further allege that

the August 15, 1991 meeting was a secret meeting between the Williamses and Borough officials, and that discussion at that meeting resulted in a change to the June 20, 1991 resolution which deprived Dickerson of adequate access to her property. In addition, they allege that Platting Board members visited the Williamses privately to inspect the property.

There is no genuine issue of material fact as to whether a conspiracy to deprive plaintiffs of their civil rights existed between the Williamses and Borough officials. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). There is no evidence that Borough officials were motivated by racial animus or were aware of any racial bias on the part of the Williamses. There is no evidence that Borough officials condoned the berm and refuse piles blocking the jeep trail. The Platting Board took no official action at the August 15, 1991 meeting, and the minutes of that meeting do not provide evidence of a conspiracy. Moreover, there is nothing out of the ordinary about individual Borough officials discussing an

application with the persons who submitted it.

The mere existence of a scintilla of evidence in support of plaintiffs' position is insufficient to oppose a motion for summary judgment. There must be evidence on which a jury could reasonably rely to find in favor of the plaintiffs. Id. at 252. There is no evidence that the Williamses and Borough officials reached an understanding to deprive plaintiffs of their rights. See Adickes, 398 U.S. at 158. Nor is there evidence that the Platting Board failed to exercise its independent judgment. United Steelworkers of America v. Phelps Dodge, 865 F.2d 1539, 1541 (9th Cir.) (en banc), cert. denied, 493 U.S. 809 (1989). There is therefore no genuine issue of fact as to whether a conspiracy existed in this case. The district court properly granted summary judgment in favor of the Williamses on plaintiffs' section 1983 claim.

III.

Even if the evidence of a conspiracy were sufficient to survive summary judgment, plaintiffs have not presented

evidence that any constitutional deprivation occurred. See Adickes, 398 U.S. at 150 (plaintiff must prove a violation of the Constitution or laws of the United States to recover under section 1983).

Plaintiffs allege that their due process rights were violated because they were not given the opportunity to participate in the August 15, 1991 meeting. Plaintiffs had several opportunities to present their views before the Platting Board before it passed the June 20, 1991 resolution. Although they did not receive notice of the August 15, 1991 meeting, the transcript of that meeting indicates that it involved only an informal discussion clarifying the specifications for the road that the Williamses were required to build. Plaintiffs received adequate notice and opportunity to be heard before the Borough vacated a portion of the public easement. Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 13 (1978); cf. Harris v. County of Riverside, 904 F.2d 497 (9th Cir. 1990).

Similarly, there is no genuine issue

of fact as to whether the Borough violated Dickerson's equal protection rights. Summary judgment is appropriate because there is no evidence that the Borough was motivated by racial animus, (emphasis added) and the Board's findings indicate that its action in vacating a portion of the public use easement was rationally related to a legitimate governmental interest. See United States v. Sperry Corp., 493 U.S. 52, 65 (1989); Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450, 457-58 (1988). The Board made the following findings:

9. The existing jeep trail and trail constructed in May of 1991 leaves the 200' access easement and trespasses on private property. The alternate equal access will be through a public access easement thus providing superior and legal access to the adjacent property.

10. The road contractor appearing in the video tape submitted for the record by Ms. Dickerson, also believed that a road could well be constructed to Borough

standards let alone to jeep trail equivalency.

Vacating part of the easement on the condition that the Williamses construct an equivalent access road is rationally related to the Borough's interest in preventing public trespass on private property.

Finally, plaintiffs have not established that there is a genuine issue of fact regarding whether an unconstitutional taking occurred in this case. The Borough's resolution did not purport to affect any private interest that plaintiffs may have in the southern 100-foot portion of the easement. Moreover, there is no evidence that actions by Borough officials deprived Dickerson of access to her property or of economically viable use of her property. See Lucas v. South Carolina Coastal Comm'n, 112 S. Ct. 2886, 2895 (1992).

IV.

The district court properly invoked 28 U.S.C. § 1367(c) to dismiss plaintiffs' state law claims without prejudice.

V.

Plaintiffs have not presented

evidence creating a genuine issue of material fact that a conspiracy existed between the Williamses and Borough official, or that they were denied due process or equal protection rights. Moreover, the district court properly declined to exercise jurisdiction over plaintiffs' state law claims. The judgment of the district court is affirmed.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW and MARY ANDREW,

Plaintiffs,

v.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Defendants.

Case No. A92-281 Civ

SECOND AMENDED COMPLAINT

COUNT ONE

Plaintiff, M. Ashley Dickerson also known as Mahala Ashley Dickerson would show unto the court as follows:

1. The jurisdiction of this court is based on the existence of a federal question; specifically the denial of the equal protection of the law as guaranteed by the Fourteenth Amendment of the United

States constitution, and acting under color of law depriving Plaintiff of her constitutional rights.

2. Plaintiff is a Black African-American, a citizen of the United States, and a citizen of the State of Alaska.

3. Plaintiff is a part owner of the following described real estate located in the State of Alaska, Third Judicial District Matanuska-Susitna Borough and more particularly described as follows to wit:

Township 17N Range 2W Section 30 Lot A13 consisting of 40 Acres more or less.

4. That Plaintiff purchased an interest in said property over ten years ago and at the time of the purchase of said property same was owned by the original homesteaders, William A. Andrew, and Mary Andrew.

5. That in order to subdivide said property the said William A. Andrew and Mary Andrew were required to give an easement for the benefit of the adjoining property in approximately 200 feet on the Southerly portion thereof. That in view of the Northerly part of the proposed subdivision being extremely swampy, an

easement of 200 feet was required in order to permit construction of a road known as Trail's End. That the 10 acres to the west of the 40 acre tract in which Plaintiff has an interest were at the time owned by the son of the subdivider, William A. Andrew. That a road was required to be constructed in the easement provided for in the 10 acre parcel and connected with a jeep trail which wound around, traversing the full 40 acre tract giving access to the full tract for the use of the new purchasers.

6. That at a later time, not exactly known to Plaintiff, Defendants Duke Williams and Jean Williams became the alleged owners or purchasers of the tract which had formerly belonged to the son of the original homesteader. But at a time not exactly known to Plaintiff the said Duke Williams and Jean Williams proceeded to pile rubbish, debris and stumps onto the property owned by the Plaintiff and succeeded in completely destroying any access to said property by blocking the access to the jeep trail and piling large collections of berm on what would have been the section line and destroying the

turn around thereon.

7. That during the year 1990 Plaintiff attempted to have a survey done of the 40 acres in order that same could be partitioned to the co-owners and Plaintiff in the aliquot shares as jointly owned. But that upon the observation of the attempted survey, the Defendants Duke williams and Jean Williams filed for a vacation of the easement to illegally block entrance of Plaintiff to access to the 40 acres in which she held a one-half interest. That at the first hearings thereon the Borough Platting board indicated a possibility of following the law of easements, but after many hearings and much testimony the Borough platting board without any notice to Plaintiff vacated the easement and allowed the road to be closed to Plaintiff substituting therefor a narrow trail in the swamp.

8. That the substituting of this narrow trail in the swamp for the access to the forty acres has amounted to the complete blocking of all access. That despite the fact that said property is completely inaccessible to Plaintiff without the expenditure of thousands of

dollars in road construction, the Matanuska-Susitna Borough has failed to adjust the taxes thereon in keeping with the destruction of its value.

9. That in the process of surveying of said property it had been the intentions of Plaintiff to gain approval of the Defendant Matanuska-Susitna Borough of a partitioning thereof to give 20 acres thereof to Plaintiff and 10 acres each to the other co-owners. Despite the fact that a good access road existed and that initially the platting board expressed an intention to require access equal to or superior to that access which it was taking away, it allowed the inferior access of a mere trail in the swamp. In furtherance of the denial of equal protection of the law, the borough platting board has disapproved the plan submitted by Plaintiff for the replatting and partitioning of the 40 acres and has added to it a requirement that Plaintiff would have to build a pioneer access road all the way to the adjoining main road known as Andrea, thus requiring of Plaintiff that which had already been given to Plaintiff by the previous owner,

but taken away by the borough platting board.

10. That the actions of the Defendants have been malicious and damaging and have created a complete destruction of the value of the property by destroying its access to all except Defendants Duke Williams and Jean Williams.

Wherefore Plaintiff prays as follows:

1. Damages against all Defendants in a sum in excess of $100,000.00.

2. For a mandatory injunction against all defendants requiring them to restore the access which has been taken away.

3. For a mandatory injunction requiring the Platting board and the borough to allow the subdivision map as submitted by the Plaintiff to be approved with no more requirements than had bene required at the time of the purchase.

For all other relief right and proper in the premises.

COUNT TWO

COMPLAINT OF WILLIAM F. BOCAST

Plaintiff, William F. Bocast would show into (sic) the court as follows:

1. Plaintiff, William F. Bocast incorporates by references herein all matter set forth in count one above.

2. Plaintiff William F. Bocast is the owner of the following described real estate located in the state of Alaska, Third Judicial District Matanuska-Susitna Borough and more particularly described as follows to wit:

Township 17N 2 W Section 30 Lot A18 consisting of 10 Acres more or less.

4. One of the main factors in Plaintiff Boscast's (sic) decision to purchase lot A18 was the 200 foot easement which lies on the east side of said lot. This provides enhanced access to lot A18. Allowing the easement to be vacated will decrease the value of lot A18 be restricting access from the east and damage the orderly growth of the neighborhood.

5. The easement predated the purchase of the property by the defendants, Williamses or Plaintiff, Bocast. Plaintiff, Bocast, objected to the vacation of the easement in writing, but received no response to his objections.

6. Plaintiff, Bocast received no notice of any final orders entered by the Borough and was given no opportunity to object to the road construction. Prior to the blocking of the existing easement, which connected with a jeep trail to the 40 Acre tract described in count one Plaintiff Bocast enjoyed access to said tract. Plaintiff, Bocast entered same by his three wheeler with permission of Co-Plaintiff, Dickerson, enjoyed hunting privileges thereon and snowmobile privileges.

7. That Defendants, Williamses, have blocked the access road which connected with the jeep trail and have substituted therefor a narrow trail in the swamp. That with the pioneer access road which existed prior to the Borough and the Williamses destruction thereof, an orderly growth to the east insured the increased value of Plaintiff's property which has now been completely blocked.

8. That the trail now constructed by Defendants, Williamses and approved by the Defendant, Matanuska-Susitna Borough is in the swamp leading to a bog. That Plaintiff has been damaged in a sum to be

proved at trial and has been deprived of his constitutional rights by the taking of his property without payment for same.

Wherefore Plaintiff prays as follows:

1. Damages against all Defendants in a sum in excess of $100,000.00.

2. For a mandatory injunction against all defendants requiring them to restore the access which has been taken away.

For all other relief right and proper in the premises.

COUNT THREE

Plaintiffs William Andrew and Mary Andrew would show unto the court as follows:

1. Plaintiffs William Andrew and Mary Andrew incorporate by reference herein all matters set forth in counts one and two above.

2. Plaintiffs William and Mary Andrew are the original owners of the land covered in counts one and two and have a security interest in same.

3. That neither the platting board nor the borough gave any notice to them of the plan to vacate the 200 foot easement. That upon learning indirectly of the

possibility of the vacating of the easement, William Andrew indicted an interest in testifying, but this was ignored.

4. That the said William and Mary Andrew were given no notice of the final decision of the platting board or of the vacating of the southerly satisfactory footage of the easement which they dedicated, nor of the substituting for same a trail in the wetlands, slanting into the deep swamp bogue (sic). The Defendants Williamses destroyed the access created by them and blocked the access and turn around created by them for the benefit of the land and the public.

5. That the actions of the Platting Board, the Department of Public works and the Matanuska-Susitna Borough amount to the deprivation of the equal protection of the law and the taking of property without due process of law since the security interest of the said William and Mary Andrew is decreased in value.

6. That because of the actions of the Defendants, Plaintiffs William and Mary Andrew have been damaged in a sum in excess of $100,000.00.

Wherefore Plaintiffs William and Mary Andrew Pray:

1. For damages against all Defendants in a sum in excess of $100,000.00.

2. For a mandatory injunction against all Defendants requiring them to restore the access which has been taken away.

3. For all other relief right and proper.

Dated this 13 day of April, 1992.

DICKERSON & GIBBONS, INC.

BY: S/S

M. ASHLEY DICKERSON

This is to certify that a copy of this document was served on Allan E. Tesche, Charles W. Ray, Jr. U.S. Mail on the 13 day of March, 1992.

S/S

Jodi M. Bourn

U. Usable Area means only that area where seasonal high water table is a minimum eight feet below (emphasis added) the surface and not within an area dedicated to public use. Water table and ability of soils to accept effluent shall be determined by a number of twelve foot deep borings or test holes sufficient to indicate subsurface conditions over the entire area of the subdivision. These borings or test holes shall be accomplished under the direct supervision of a State of Alaska registered engineer who shall submit his soil logs and other findings in writing to the State of Alaska Department of Environmental Conservation for review and recommendations and to the Matanuska-Susitna Borough.

16.05.030 Penalties and Remedies.

A. The owner or agent of the owner of land who publicly offers by any means to sell, transfer, or who sells or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and filed in accordance with this title,

is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than five hundred dollars for each lot or parcel offered for sale, transferred, sold, or included in a contract to be sold.

B. No person may file or seek to have a plat filed unless it has been approved in accordance with this title. A person who knowingly violates this subsection is punishable upon conviction by a fine of nor more than five hundred dollars.

C. The Borough or any aggrieved person may bring a civil action to enjoin any violation of this title, any transfer or sale of an unlawfully subdivided parcel and the violation of any term or conditions of any plat or other entitlement approved under this title, and to obtain damages for any injury the plaintiff suffered as a result of the violation. In addition to injunctive and compensatory relief, each violation shall be subject to a civil penalty not to exceed five hundred dollars. An action for injunction under this section may be brought notwithstanding the availability

of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the Superior Court shall enjoin the violation.

D. Each act or condition in violation of this title, or any term or condition of any plat or other entitlement under this title, and every day during which the act or condition occurs shall constitute a separate violation of this title.

E. If an agreement to sell or lease land which would result in a subdivision is absolutely contingent upon platting authority approval within five years, it does not constitute a violation of this section.

4. The Assembly will not routinely approve any vacation of a public interest in land where objections to the vacation are made by persons with an interest in land adjacent to or affected by the vacation, or by any government agency or department which has a responsibility to the public which may be affected by the vacation. If the Assembly finds an objection to be valid, the vacation will be vetoed unless the objection is first satisfactorily resolved.

COMMENTS:

1 - Dedicate a public use easement from the end of Trails End to the east boundary of the 40 acres. 50' minimum r/w

Construct a pioneer access standard road within the 40 acres up to the 20 acre parcel with an 80' constructed cul de sac (temporary turn around) at the terminus of the construction.

Upgrade Trails End from Andrea Drive to the 40 acre parcel to Pioneer Access standards. Prior to beginning this upgrade apply to the department of public works for an "Authorization to work in MSB R/W."

Proposed dedication needs to be w/in an area that be feasibly constructed.

After road is constructed, provide certification that the road is constructed w/in the r/w, have inspected by DPW, add the new legal description to the MSB easement form & MSB will sign off for recording.

2 - Once road easement is completed & recorded submit the waiver application for approval.

30-17-2W SE NE

BOOK 243 PAGE 396

WARRANTY DEED CREATING TENANCY IN COMMON

The Grantors, WILLIAM G. ANDREW and MARY LOUISE MICHAELIS ANDREW, husband and wife of Wasilla, Alaska, for and in consideration of the sum of TEN ($10.00) DOLLARS and other good and valuable consideration do hereby warrant, convey, and confirm to the Grantees, M. ASHLEY DICKERSON, WILLIAM STEVEN BROWNER and PAT BROWNER, and LARRY D. CARD and MINNIE E. CARD, respectively, the following described real estate located in the State of Alaska, Palmer Recording District, Third Judicial District, and more particularly described as follows, to wit:

> The Southeast one-quarter (SE1/4) of the Northeast one-quarter (NE1/4) of Section 30, Township 17 North, Range 2 West, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska.

Subject to reservation by the U.S.A. of all oil, gas and minerals as

reserved in Patent, Recorded November 21, 1963 in Book 48, at Page 284.

SUBJECT ALSO to right-of-way easement for electric transmission or distribution line or system across said premises, together with the right to enter said premises to make repairs and the right to cut shrubbery and trees which constitute a menance (sic) or danger to the electric transmission or distribution line or system located on said premises, as granted to MATANUSKA ELECTRIC ASSOCIATION, INC., by instrument recorded October 6, 1961 in Volume 39, at Page 87.

DATED this 1st day of September, 1981.

S/S
WILLIAM G. ANDREW

S/S
MARY LOUISE MICHAELIS ANDREW

Address of Grantees:

M. Ashley Dickerson
1330 E. 15th
Anchorage, AK 99504

Larry D. & Minnie E. Card

3410 Evergreen St.
Anchorage, AK 99504

William Steven & Pat Browner
3837 West Minster Way
Anchorage, AK 99504

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that before me, the undersigned a Notary Public in and for the State of Alaska, duly commissioned, qualified and sworn as such Notary Public, this day personally appeared WILLIAM G. ANDREW AND MARY LOUISE MICHAELIS ANDREW, husband and wife, to me personally known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to me that they executed said instrument freely and voluntarily, with knowledge of its contents, for the uses and purposes therein mentioned.

S/S

Notary Public in and for
the State of Alaska
My Commission Expires:

12/6/82

Appendix P4

ASSUMPTION WARRANTY DEED

The Grantor, Clifford O. and Rita W. Wilson, husband and wife, for and in consideration of TEN DOLLARS ($10) and other good and valuable consideration to their in hand paid, CONVEYS and WARRANTS unto Grantee, Duke M. and Jean K. Williams, husband and wife, whose address is: SR Box 5186, Wasilla, Alaska 99687, the following described real property, situated in the Palmer Recording District, Third Judicial District, State of Alaska, to-wit:

E1/2 E1/2 SW1/4 NE1/4, Sec 30 T17N R2W SM, located in the Palmer Recording District, Third Judicial District, State of Alaska.

TOGETHER WITH, ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or anywise appertaining.

SUBJECT TO all reservations, easements, exceptions, restrictions, covenants, conditions, and rights-of-way of record, if any.

SUBJECT FURTHER TO that certain deed of trust, including the terms and provisions thereof, dated November 5, 1985; executed by Clifford O. and Rita E. Wilson, trustor; to Mat-Su Title Insurance Agency, Inc., trustees; for the benefit of Ranier Financial Services Company; to secure the original sum of $135,069.00 and interest; recorded November 19, 1985, in Book 414, at Page 601, in the Palmer Recording District, State of Alaska. The Grantee herein hereby agrees to assume said deed of trust and deed of trust note, including the terms and provisions thereof, at its present balance, drawing interest and being payable as shown on said deed of trust and deed of trust note, and agrees to abide by the terms and provisions as set forth therein. Grantee herein agrees to indemnify and save Grantor herein harmless from any and all liability or loss by virtue of said of trust or deed of trust note.

TO HAVE AND TO HOLD the premises, all and singular, together with the appurtenances and privileges thereto incident unto said Grantee, and to their heirs, executors, administrators,

successors and assigns, *FOREVER*.

DATED this 8th day of April, 1986.

GRANTOR:	GRANTEE:
S/S	S/S
S/S	S/S

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY, that on the 8th day of April, 1986, before me, the undersigned Notary Public in and for Alaska, duly commissioned and sworn as such, personally appeared Clifford O. Wilson and Rita E. Wilson, and Duke Williams and Jean K. Williams known to me to be the person(s) named in and who executed the above and foregoing instrument and they acknowledged to me that they signed and sealed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the date first abovementioned.

S/S
Notary Public in and for the State of Alaska.

my commission expires

2/28/90

WAIVER RESOLUTION SERIAL NO. 76-39

A RESOLUTION OF THE PLANNING COMMISSION WHICH APPROVES THE WAIVING OF THE REQUIREMENTS SET FORTH IN MATANUSKA-SUSITNA BOROUGH ORDINANCE SERIAL NO. 73-6 AS AMMENDED (SIC) BY ORDINANCE NO. 74-12 AND 74-13, JULY 16, 1974, SUBDIVISIONS REGULATION TO PERSONS NOTED BELOW FOR THE DIVISION OF THAT PROPERTY DESCRIBED MORE PARTICULARLY HEREIN.

WHEREAS, the applicant (s) _____ WILLIAM G. AND MARY L. ANDREW _____, did make application to waive the preparation, submission or approval and recording of a plat following the procedures as established by the planning department for processing such requests, and

WHEREAS, satisfactory evidence has been submitted that a conveyance of a part of a larger tract, described as:

S1/2 of the NE1/4 of Section 30, Township 17 North, Range 2 West, S.M. and containing approximately 80 acres + or -.

is not made for the purposes of, or in connection with a present or projected

subdivision development, and

WHEREAS, the tract(s) to be severed from the above described parcel are described as follows:

Parcel #1 - W1/2 W1/2 SW1/4 NE1/4, Section 30, T 17 N, R 2 W, S.M. and containing approximately 10 acres + or -.

Parcel #2 - E1/2 W1/2 and W1/2 E1/2 of the SW1/4 NE1/4, Section 30, T 17 N, R 2 W, S.M. and containing approximately 20 acres + or -.

Parcel #3 - E1/2 E1/2 SW1/4 NE1/4, Section 30, T 17 N, R 2 W, S.M. and containing approximately 10 acres + or -.

Parcel #4 - SE1/4 of the NE1/4, Section 30, T 17 N, R 2W, S.M. and containing approximately 40

acres + or -.

which do not fall within the general intent of subdivision, and

WHEREAS, the applicant has complied with all the requirements set forth in Matanuska-Susitna Borough Ordinance Serial No. 73-6 as ammended (sic) or Ordinance No. 74-12 and 74-13, July 16, 1974, Sec. 08.45.140 Variances and Waivers. (c) or (d), and

WHEREAS, the Planning Commission did review and approve the waiver application of WILLIAM G. & MARY L. ANDREW at its August 30, 1976 meeting.

THEREFORE, BE IT RESOLVED, that the Planning Commission for the Mat-Su Borough does grant a waiver of the Platting requirement for the aforedescribed tract.

APPROVED AND ADOPTED BY THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION this 17th day of September 1976.

Marilyn McGuire
Planning Department Representative

Wesley M. Howe(?)
Planning Director

Appendix R3

WAIVER RESOLUTION SERIAL NO. 76-39

Appendix R4

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

M. ASHLEY DICKERSON, aka Mahala Ashley Dickerson; WILLIAM F. BOCAST; WILLIAM ANDREW; MARY ANDREW,

Plaintiffs-Appellants,

v.

DUKE WILLIAMS; JEAN WILLIAMS; MATANUSKA SUSITNA BOROUGH,

Defendants-Appellees.

No. 93-35237

D.C. No. CV-92-281-JKS

PETITION FOR REHEARING

I. MATERIAL POINTS OF FACT AND LAW ARE OVERLOOKED IN THE DECISION

Both courts have overlooked material points of fact and law in the decision.

THE FACTS ARE MISINTERPRETED

In stating the facts, this court has focused on Dickerson ownership only, failing to assert as shown in the pleadings that M. Ashley Dickerson, an

attorney, influenced the other owners to join her in the purchase of the 40 acres. The present owners, Judge Larry Card and Dr. Steve Browner, had the same rights that she had to the right of access to the property. The court has placed emphasis on the respective races of the parties, inferring that only by showing a deprivation of equal protection and due process were denied because of race, can a black person prove a denial of constitutional rights. The respective races of the parties are not necessarily controlling as Fourteenth Amendment rights transcend race and sex. William Andrew and Mary Andrew, Caucasion, had the right to be heard and be notified of the destruction of the easement which they had granted the purchasers of the 40 acres. William Bocast, owner of adjoining property and user of the road blocked by the Williamses and deleted by the Borough, had the right to use of same as an adjoining land owner. He was not given any notice.

The opinion further errs when it states in paragraph two thereof, as follows:

The entire easement was for use as a public right of way.

The easement was set forth in the Record at 23-58 as follows:

> and WHEREAS, the Grantor wishes to grant access for ingress and egress over and through the above-described land for the benefit of all owners of property adjacent to said right of way hereinafter described, and to the public generally without limitation. (Emphasis added.)
>
> NOW THEREFORE, the grantor does hereby convey to the owners of property adjacent to and adjoining said below-described right of way, and to the public in general, for unlimited public use, a right of way over said land being described as follows: (Full description omitted but includes property involved herein.) (Emphasis added.)

There is no way that the easement could be interpreted as "may have created a private easement". Only a small portion

of the road touched on the Williams property but the whole 200 foot easement was dedicated because of the fact that there was a swamp. The opinion fails to in any manner mention the swamp or the fact that the deleting of a part of the easement resulted in the construction of a road in the swamp which could not be used in any manner or in any way improved to the extent that it could be used as an acceptable frontier access road as provided by Exhibit 22 appearing in the Record as 12-74 and necessary for the purchasers to ever subdivide their properties, giving to attorney Dickerson 20 acres, to Dr. Browner 10 acres and to Judge Card 10 acres. See Exhibit 22 (R-74).

In paragraph 3 of the opinion, the court glosses over the fact that Dickerson did not receive notice of a platting board meeting held on August 15th but that the Williamses did receive notice of that meeting. This resulted in a denial of equal protection and due process as both parties should have a right to participate. Only the Williamses could participate and had notice but the

Andrews, the Dickersons, Cards, Browners and Bocasts should have had equal notice.

The court erroneously states that the board members discussed clarifications of the June 20, 1991 resolution but did not take formal action on the Williamses' application. This is also erroneous since the board definitely stated that since the Williamses were not subdividing, they would not have to build a road in keeping with that which was to the west as had been ruled upon at the June 20th meeting. See Exhibit O, p. 1 where we find this language:

> . . . Staff had seven findings listed there. Adding finding number eight, a registered engineer licensed with the State of Alaska, stated that a borough approved road could be built within the north 100' of the existing 200' public use easement and that the road should be built to the standard at which the standard is at the west end of the north 100'.
>
> This has added some confusion. The intent of my

recommendations were to have a jeep trail to replace the jeep trail that was there. However, there's some confusion with, on staffs part, department of public works believes, as I understand it, it should be a pioneer access standard road. Construction permit has not been issued yet, it's been requested. DPW will not approve anything other than a pioneer access standard road. With the confusion that there is and the misunderstanding. So what we need is a clarification from the board. . . .

At page 3 of Exhibit O we find the following:

Strother: Because at the west boundary of the property, I think it's Tails (sic) End Road, it's almost to pioneer access standards (inaudible) cul-de-sac and turn around and as the

motion said to that quality of road at the west side of the property, their (sic) assuming you're talking about the William's (sic) property. To want to have a, one lane say 12' wide with a gravel topping so (inaudible) to do. So we're getting (inaudible) strip. Some (inaudible) guy over there just (inaudible) level with (inaudible) drive through up to the top of the existing grounds. (inaudible) the driveway take (inaudible) access or. . .

At page 4 we find the following:

Colberg: (inaudible) wonder if it's in order to ah,

re-do that motion eliminating the equivalency on the road bed as it starts out on the west. . .

Brown: Mr. Chairman? I would caution the board against making the motion on this since, I think that if a motion were to be given than (sic) we would have to go back and make sure that proper public notice was given, that all parties who needed to receive public notice did so. I think a clarification on the boards' (sic) part would be all we would need.

Moving to page 6, we find the following:

Strother: Maybe as a clarification to go,

> Rick, (inaudible) still have to change the original motion. The original motion says, at the west end of the property, could you define which property, maybe we should say of the property of the (inaudible)

In view of the many changes indicated, it is impossible to say that nothing of significance was done at this meeting. The essence of the meeting amounted to a change from Borough Access standard to jeep trail standard. With no notice of this meeting and the changes made in construction having been given to the plaintiffs below, the time for appeal passed. That left plaintiffs with the remedy of asserting their civil rights in the federal court.

The court has failed to understand that the road was built in a swamp as shown by the overwhelming evidence. The court has failed to recognize that this land is now totally inaccessible and to

recognize the fact that already the jeep trail which was laid out in the swamp was partially covered with water as shown by affidavits, photographs and video. The statement that the Williamses built a gravel road is giving the Williamses even a greater advantage than the platting board gave as what the Williamses built was never described other than as a jeep trail by the platting board. The court completely ignores the fact that this jeep trail, called a road, has never been maintained by the Borough yet the road to the Williamses' property is maintained even to the Williamses' door which is definitely a denial of equal protection.

This court further has failed to recognize that when a person who is not an official acts in concert with one who is an official, that person acts under color of law. See **Jackson v. Pantazes**, 810 F.2d 426 (4th Cir. 1987) (officer and bail bondsman act together to make arrest; alt. holding) or conspiratorial action, see **Tower v. Glover**, 467 U.S. 914 (1984) (public defender, a private actor under **Polk County**, is state actor when conspiring with covered state officials).

United Steelworkers v. Phelps-Dodge Corp., 865 F.2d 1539 (9th Cir. 1989) (potential conspiracy between employer and police to break strike by arresting strikers). There's nothing in the cases which this court cites that would justify a conclusion that when the Borough gave special preference to the Williamses and failed to give equal protection to the Andrews, the Bocasts, the Browners, the Cards and Dickersons, there was no denial of equal protection.

The contention that Linda Andrew Wilbur did not claim that anyone else was present when Jean Williams made her statement that she "just didn't want a bunch of blacks back there", is not backed up by any showing of the necessity of another person being present when the statement was made. The statement was made to Linda Wilbur and the actions taken by the Williamses with such cooperation from the Borough as the changing of what was done when Card and Dickerson were present in the meeting of June 20, 1991 from what was done at the August 15, 1991 meeting of which Andrew, Bocast, Card, Dickerson and Browners had no notice

certainly amounts to a conspiracy. The definite changes were that the Williamses would not have to build the kind of road they were ordered to build but that they could build a jeep trail instead of a road equivalent to the one to the west. Exhibit O, pp. 3, 4, 5 and 6. The statement as shown in Exhibit 22 of the platting board, a part of the Borough, by which for the approval of the division of the 40 acres among the Browners, Dickersons and Cards would require that they go all the way up to Trail's End and bring the road to Borough access road standards showed also the denial of equal protection of the law. When the first Andrew subdividing was done the part of Trail's End was acceptable, there was no showing of a change in the law which would require the black purchasers to do more than had been required of the Andrew family when they subdivided, obviously a special burden making it impossible for the black professional purchasers to ever be able to subdivide their land among themselves. The swamp trail which was substituted for the high road which had been used for five years by the purchasers

of the forty acres prior to the Williamses ever purchasing the ten acres showed a definite denial. There should have been a full trial to determine the basis of that. No legal business reason was ever given for requiring more of the black purchasers when they subdivided than was required of the white subdividers when they subdivided. The fact that Bocast and the Andrews joined in the suit shows that they recognize the way in which the Williamses and the Borough had discriminated against the black purchasers. The statement that she "just didn't want a bunch of blacks back there" carried with it an inference of a low class of person because of being black. The professional status of the black purchasers is being minimized by this court failing to give them their proper titles.

This court is reminded that by **Hurd, et al. v. Hodge, et al., Urciolo, et al. v. Same**, 68 S.Ct. 847, 334 US. 24 (1948), the Supreme Court outlawed restrictive covenants based on race. The Borough has, by conspiring with the Williamses, reenacted restrictive covenants based on race in a subtle manner.

The court seems to forget that not only Dickerson but all purchasers were deprived of adequate access to their property. Not only have the three family purchasers of the property been denied access thereto but the general public has also been denied access. Bocast has been denied access and his affidavit at CR 30a-12 shows how he had traditionally hunted in the area prior to the road being blocked by the Williamses. The fact that the August 15th meeting was made known to the Williamses and they were given the right to be heard and substantial changes in their requirements were granted without any notice should be sufficient to show that there was a denial of equal protection.

A jury could have easily seen that notice of the August 15th meeting to one party with no notice to the other, the right to be heard by one party with no such right to the other, the change of the requirement from a pioneer access road to a jeep trail in the absence of the other party, could have well indicated a conspiracy and denial of equal protection as well as denial of due process. The

fact that plaintiffs had opportunities to present their views at the platting board before it passed the June 20, 1991 resolution is no excuse for the failure to have notice of the August 15th meeting at which the platting board reversed its position by requiring only a jeep trail instead of a pioneer access road. It is obvious that the court has failed to understand the difference in what occurred at the meetings and the fact that the jeep trail as built was placed right in the swamp which was the basis of the rendition of the easement to enable the persons to operate without going through the swamp. By the combined actions of the Williamses and the Borough and the platting board, the property is now standing totally inaccessible. There has been actually a giving of the property to the Williamses as they are the only ones who can have access to it. The quote on page 6 which states that "the alternate equal access will be through a public access easement thus providing superior and legal access to the adjacent property" would have been perfect had it been followed. The further quote that the road contractor appearing

in the video tape submitted for the record by Mrs. Dickerson also believed a road could well be constructed to Borough standard fails to state that special fabrics would be required on same prior to applying gravel as gravel would sink into the mud. However, the road builder outlined in detail what would have to be done to build a road there, requiring the laying of certain fabrics before gravel would be applied. The fact that the road was not constructed in the higher portion of the remaining 100 feet and not by the instructions of the road builder but in the swamp below, has been completely ignored by both courts. No equivalent access could possibly be constructed in the swamp area and under no circumstances could a jeep trail constructed in the swamp area ever be brought to Borough access standards which is what must be done before the owners of the 40 acres could make use of their property. The latter part of the video showed that in less than one year about one-third of the jeep trail constructed by the Williamses in the swamp was under water.

CONCLUSION

The Borough has thus taken away the property of the owners of the 40 acres without going through a condemnation process which would have to be done. Private rights remaining there are useless if they cannot be used. To assert private rights would lead to, in all probability, the situations as now being depicted in Bosnia, Serbia and Jerusalem. The five years which have resulted in denial of access to this property have been completely ignored. Both courts have practically given the 40 acres to the Williamses, who as owners of the 10 are blocking access thereto and being protected in that blocking by the action of the Borough and its platting board, creating impossible conditions for the utilization of same.

DATED at Wasilla, Alaska this ____ day of _____, 1994.

DICKERSON & GIBBONS, INC.

BY_____

M. ASHLEY DICKERSON

FILED

AUG 24 1994

CATHY A. CATTERSON, CLERK

U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

M. ASHLEY DICKERSON, aka Mahala Ashley Dickerson; WILLIAM F. BOCAST; WILLIAM ANDREW; MARY ANDREW,	)	No. 93-35237
	)	D.C. No.
	)	CV-92-281-JKS
	)	
	)	ORDER
Plaintiffs-Appellants,	)	
v.	)	
DUKE WILLIAMS; JEAN WILLIAMS; MATANUSKA SUSITNA BOROUGH,	)	
Defendants-Appellees.	)	

Before: POOLE, BRUNETTI, and KLEINFELD, Circuit Judges.

Appellants' petition for rehearing is DENIED.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law nor deny to any person within this jurisdiction equal protection of the laws. Fourteenth Amendment to the United States Constitution, Section 1.

42 U.S.C. § 1983 states:

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Supreme Court, U.S.
FILED
OCT 3 1994
OFFICE OF THE CLERK

No. 94-421

In The

Supreme Court of the United States

October Term, 1994

M. ASHLEY DICKERSON, a/k/a MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW AND MARY ANDREW,

Petitioners,

v.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

ALLAN E. TESCHE
RUSSELL, TESCHE & WAGG
510 L Street Suite 300
Anchorage, Alaska 99501
(907) 258-1747

Attorney for Matanuska-Susitna Borough

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. Whether Due Process or Equal Protection required notice to Ms. Dickerson of a Platting Board meeting where no action was taken and the Board's previous decision was only discussed informally by members of the Board and staff.

2. Whether any property interest of Ms. Dickerson has been taken by vacation of a portion of public roadway connecting the Borough road system to her property and construction of a new road providing continued public access leaving intact her private access over the older "Jeep Trail."

3. Whether the lower courts properly dismissed Civil Rights Act claims against the Borough because petitioners failed to show a constitutional deprivation and that actions of the Borough were motivated by racial animus.

4. Whether Dickerson can now challenge vacation of a portion of the public right-of-way in federal court because she did not timely avail herself of appellate remedies under the Matanuska-Susitna Borough Code of Ordinances and Alaska law.

PARTIES

The caption of the case in this Court lists all parties. For brevity, petitioners are referred to as "Dickerson" or "Ms. Dickerson."

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OPINIONS BELOW

The opinion of the United States District Court is set forth in an order issued by the Hon. James K. Singleton on March 3, 1993. [Pet. App. J1-14] Final judgment was entered by the District Court on March 10, 1993. [App. A]

The opinion of the Ninth Circuit Court of Appeals is set forth in a memorandum filed on July 22, 1994 [Pet. App. K1-11], and a final judgment entered on the same day. [App. B] A petition for rehearing before the Circuit Court was denied on August 24, 1994. [Pet. App. T1]

The opinions below are unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 22, 1994. A Petition for Rehearing was denied on August 24, 1994. A petition for a writ of certiorari was presumably filed with this Court before it was received by the Matanuska-Susitna Borough on September 2, 1994. The petition may be reviewed by this Court under 28 U.S.C. Sec. 1254(1)

STATEMENT OF THE CASE

Organized under Alaska law as a second class municipal government, the Matanuska-Susitna Borough exercises the power to review and approve subdivisions of land within its boundaries. AS 29.40.010(a). [App. C] The Borough has enacted subdivision ordinances, created a Platting Board, and promulgated standards for public

improvements, including construction of access roads typically required of subdividers. AS 29.40.070; AS 29.40.080. [App. C] The Borough may also vacate existing public rights-of-way on lands within its boundaries. AS 29.40.140(b). [App. C] Administrative appeals are available to affected parties from decisions of the Borough Platting Board to higher borough bodies (AS 29.40.050 [App. C]; MSB 15.38 [App. D]) and, of course, to state courts under Alaska law. AS 29.40.060 [App. C]; MSB 15.38.230 [App. D].

In 1976, William and Mary Andrew subdivided certain real property located within the Borough into several smaller separate parcels. One of those parcels was then sold to Duke and Jean Williams, who now occupy a single-family residence located on that property. Anchorage attorneys M. Ashley Dickerson and Larry Card,[1] together with Minnie E. Card and Patricia Brower, own an adjoining, unsubdivided 40-acre tract located immediately east of the Williamses' property. Immediately west of the Williamses' property is an undeveloped tract owned by Appellant William F. Bocast. Access to the Williams and Dickerson property comes from the west along Trails End Road, which connects to the Williamses' property on its northwest corner. A map of the property as submitted to the trial court is found at Appendix E.

In connection with the 1976 subdivision and as required by the Borough, the Andrews conveyed a right-of-way "access for ingress and egress over and through . . . [the property subdivided] for the benefit of

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[1] Now a Superior Court Judge for the State of Alaska.

all owners of property adjacent to the said right-of-way . . . and to the public generally without limitation." This right-of-way easement ran east-west within an area 200 feet wide. [Pet. App. I1-2] Jeep trails were constructed within the roadway easement to provide vehicular access across the Andrews' property and to adjoining parcels.

On November 16, 1990, Duke and Jean Williams applied to the Borough Platting Board for permission to vacate "any public interest" in the southern 100-foot portion of the original 200' easement dedicated by the Andrews in 1976. The Board held several public hearings in 1991, and on June 20, 1991, passed Resolution 91-5-V [App. F] which vacated any public interest in the southern 100' portion of the easement dedicated in 1976. As a condition of that approval, the Board required the Williamses to provide "alternate, uninterrupted, equally constructed access through the subject property within the 100' remaining public easement before recordation of the vacation resolution." *Id.* The Board's action in no way affected existing rights of private landowners, including Ms. Dickerson, in the original, 200' easement. [Pet. 13-14]

On August 23, 1991, the Williamses built a new gravel road within the north 100-foot portion of the easement previously granted by the Andrews. [App. G] Completion of that road allowed continued public access to the Dickerson property within the remaining 100' public right-of-way. Photographs of the new public road are contained in Appendices H and I. Dickerson's old jeep trail is shown in the picture at Appendix J.

Local appellate remedies, including an appeal to the Borough's Board of Adjustment and Appeals and to

Alaska Superior Court, were available to Ms. Dickerson and her co-owners from the June 20, 1991 decision of the Platting Board. Neither Ms. Dickerson nor her co-owners elected to pursue those appeals. [App. K] Because the Borough Assembly declined to exercise its power to veto the vacation under Alaska state law, vacation of the right-of-way became final with recordation of Platting Board Resolution Serial No. 91-5-V. *Id.*; AS 29.40.140(b) [App. C].

Ms. Dickerson believes the newer road built by the Williamses is inferior and leads to a "deep swamp" on her property. [Pet. 13-14; Pet. App. L8, L10] She wants to subdivide her own property but does not want to improve the original roadway to Borough "Pioneer Access" constructions standards. [Pet. App. L5]

For herself and owners of two adjoining parcels, Ms. Dickerson brought an action in United States District Court for the District of Alaska on March 4, 1992, alleging that the Borough, together with Duke and Jean Williams, violated their rights under the Fifth and Fourteenth Amendments to the United States Constitution and unlawfully conspired to deprive them of those rights under 42 U.S.C. 1983 in connection with vacation of the southern 100′ of public roadway easement. Plaintiffs' Second Amended Complaint is found at petitioner's Appendix L1-11. Presented to the United States District Court for the District of Alaska on Ms. Dickerson's Motion for Partial Summary Judgment and the Borough's Cross Motion for Summary Judgment, those claims were decided on March 3, 1993, by the Honorable James K. Singleton, Jr. [Pet. App. J1-14]

An appeal from Judge Singleton's order of March 3, 1993, was taken by Ms. Dickerson, William Bocast, and William and Mary Andrew, to the Ninth Circuit Court of Appeals. On July 22, 1994, that court affirmed the district court and entered judgment for Appellees. [Pet. App. K1-11; App. B] The Ninth Circuit Court subsequently denied a petition for rehearing filed by Ms. Dickerson. [Pet. App. T1] From the circuit court's decision of July 22, 1994, Ms. Dickerson has petitioned for a writ of certiorari.

REASONS FOR DENYING THE PETITION FOR CERTIORARI

A. This Case Does Not Present an Important Federal Question the Supreme Court Should Review.

1. There is no Federal Due Process (notice) Issue.

The principal challenge made by Ms. Dickerson and the property owners she represents is a claim that insufficient advance notice was given of a decision of the Matanuska-Susitna Borough Platting Board on June 20, 1991, to vacate a portion of the public use easement over the Williamses' property, and accordingly, a claim she had inadequate opportunity to challenge that action before it became final. While vacation of public easements requires certain notice and opportunity for affected persons to be heard, it is also equally true that full and adequate notice was given to Ms. Dickerson and surrounding property owners before that decision was made. That uncontroverted proof lies principally in the actions of Ms. Dickerson and other opponents of the

vacation who energetically participated in Board proceedings before a final decision was made on June 20, 1991, to vacate the easement. The extent of Ms. Dickerson's participation in public proceedings of the Board conducted on January 3, 1991, May 16, 1991, and June 20, 1991, together with the advance notice she received of those public meetings is detailed in the affidavits of Rick Brown and Jill Carricaburu. [App. K; App. L] Ms. Dickerson cites no prior decision of this Court which would support her claim that while she actually attended the three meetings of the Platting Board and gave both written and oral testimony at those meetings, notice to her was somehow inadequate and violated Due Process.

Ms. Dickerson also claims inadequate notice of a later Platting Board meeting of August 15, 1991, during which the vacation was informally discussed by a member of staff and several members of the Board. She claims the Board reversed its earlier decision and excused the Williamses from certain Borough road construction standards she herself would have to meet if she subdivided her own property. No official action was taken by the Platting Board at its meeting of August 15, 1991, however, and the Board did not modify the conditions previously imposed in connection with vacation of the easement. [App. K] Because no official action was taken by the Board during that meeting, any comments made by Board members with respect to their interpretation of the Board's earlier action remained those of the individual members and not of the Board itself. The meeting of August 15, 1991, changed absolutely nothing. [App. K] Ms. Dickerson cites no persuasive federal authority to support her claim here that Due Process required she be

given advance notice of the meeting of August 15, 1991, where no official action was taken by the Board to modify earlier conditions imposed on the Board's approval of the vacation. With respect to notice, no federal question, and certainly no important one worthy of this Court's attention, is presented here.

2. Dickerson Failed to Prove that Access to Her Property Has Been Taken or Blocked by the Borough.

Dickerson's claim the Borough[2] has somehow prevented her from continuing to use the "old" jeep trail to reach her property is simply false. The right-of-way dedicated by the Andrews in 1976 guaranteed "access for ingress and egress over and through . . . [the property subdivided] *for the benefit of all owners of property adjacent to the said right of way* . . . and to the public generally without limitation." The right-of-way easements ran east-west within an area 200 feet in width. [Pet. App. I1-2]

The Platting Board's action affected only the public's right to continued use of the old jeep trail built in the southern 100' of the original 200' easement dedicated in 1976. [App. F] The Board's action did not affect Dickerson's existing private rights in the original 200-foot easement, because only the "public interest" in the southern

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[2] Ms. Dickerson has not cited authority in the record at any time to prove that the Matanuska-Susitna Borough, its Platting Board, or its officials have in any way participated in the alleged physical blockage of the "old" jeep trail which provided traditional access to her property.

100′ of the original easement was vacated by the Borough. [Pet. 13-14] Since these private rights have neither been condemned nor conveyed away, they remain intact.

What the Board did do, however, was to limit the public use easement to the north 100-foot portion of the original 200′ easement on condition that the Williamses build a new public road through that area. The new road was to provide "alternate, uninterrupted, equally constructed access" within the remaining 100′ public use easement. Depicted in photographs at Appendices H and I, this new road provides continued public access to the Dickerson parcel from the Borough's public road system.

Although the Borough believes that the new road which has been built is superior to the old "jeep trail" (its present condition is seen in a photograph at Appendix J), which had formerly provided access to the Dickerson property, Dickerson may still use the existing private easement to access her property by the old "jeep trail" located within the southern portion of the original 200′ right-of-way. Rather than suffering a diminution of their rights of access, Ms. Dickerson may now choose between two perfectly legal means of reaching her property: she can use the new public road the Williamses built to the north or continue to use the private easement granted to her and "all owners of property adjacent to the said right of way" in the original 200′ easement granted in 1976. [Pet. App. I1-2]

Ms. Dickerson concedes that "no private rights were affected" by the Borough's action, "nor could [they] be affected without a condemnation suit which was not done." [Pet. 13-14] As her private rights to continue to

use the old "jeep trail" to access her property are unaffected by vacation of any public right-of-way in the southern 100' of the 200' easement, and because she can use the new road constructed by the Williamses for that purpose as well, she has no claim the Borough denied her continued access to her property. Ms. Dickerson cites no persuasive decision of this Court for the proposition that her Due Process was violated by the Borough when it gave her additional access to her property over a new public road built by the Williamses and left intact her existing private easement over the older jeep trail in the original right-of-way. The Court's recent decision of *Dolan v. City of Tigard*, 129 L. Ed. 2d 304, 512 U.S. ___, 114 S. Ct ___ (1994) is not cited by Ms. Dickerson for good reason: *Dolan* entailed an effort by a local government to extract a conveyance of private property for public purposes in exchange for issue of a building permit; here, a private landowner claims a local government has somehow taken her property by requiring another landowner to build a new public road linking her property to the Borough's road system while leaving intact her existing private easement over an older right-of-way.

3. Dickerson Failed to Prove the Borough Violated Equal Protection

The essence of the federal equal protection claim brought by Ms. Dickerson under 42 U.S.C. § 1983 against the Borough is one based on alleged racial discrimination. Ms. Dickerson herself is Black. [Pet. App. L2] A federal claim based on racial discrimination must demonstrate a

discriminatory "purpose or intent" on the part of government officials who act not in spite of its adverse effects on an identifiable group but "because of" those effects on the targeted group. *See Massachusetts v. Feeny*, 442 U.S. 256, 279, 99 S. Ct. 2282, 2296, 60 L. Ed. 2d 870, 887 (1979); *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977); *Washington v. Davis*, 426 U.S. 229, 242, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976).

To support her claim, Dickerson offered only the affidavit of Linda Andrew Wilbur to prove a racist statement allegedly made by Appellee Jean Williams.[3] Williams allegedly told Wilbur, "Well, I just don't want a bunch of Blacks back there, would you?" [Pet. App. B1-3] The record below contains *no* evidence indicating when the alleged statement was made, whether any person other than Ms. Wilbur heard the statement, where the statement was made, or if it was made to any Borough official or in connection with any Borough proceeding. Even if the statement were made as alleged, there is simply no evidence which links that statement in any fashion to the Matanuska-Susitna Borough, or its officials in this case. Instead, the only evidence cited by Ms. Dickerson to prove racial prejudice appears to have been made by one of the private parties to this action outside

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[3] Dickerson implies at pages 13-14 of her petition that because Williams had not hesitated to make this racist remark to Linda Wilbur, she must have repeated it to Borough officials. Dickerson also claims that during recesses Platting Board officials and Jean Williams even embraced each other and exchanged cigarettes. Unfortunately, these claims are not substantiated in the record.

of earshot of Borough officials and outside of official proceedings which led to vacation of the public easement.

The evidence Dickerson offered did not support the inference that the Borough's actions were motivated by racial prejudice sufficient to permit a reasonable juror to find for Ms. Dickerson in a discrimination claim against the Borough. Ms. Dickerson's evidentiary submissions did not satisfy the standard required by *Matsushita Elec. Indus. Corp. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Anderson v. Liberty Lobby, Inc.*, 744 U.S. 242, 250 (1986); and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Accordingly, the courts below properly found no violation of Equal Protection. Without evidence sufficient to support a finding of a violation of Equal Protection by the Borough or that with additional discovery that claim could be proven,[4] Ms. Dickerson has no claim against the Borough under 42 U.S.C. § 1983. *City of Los Angeles v. Heller*, 475 U.S. 796 (1986).

Dickerson simply asks this Court to review the trial court's decision on competing motions for summary judgment, in the same way she asked the Ninth Circuit Court below, but without showing how important questions of federal law remain undecided or that the action

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[4] Nowhere in the record is there any evidence of any claim or argument by Ms. Dickerson that more persuasive additional evidence could be obtained that would show actions of the Borough's Platting Board, including the allegedly secret meeting of August 15, 1991, were racially motivated. In the proceedings below, Ms. Dickerson never requested additional time to investigate or substantiate her claims in order to oppose the Borough's cross-motion for summary judgment.

below in any way conflicts with controlling opinions of this Court.

B. This is Really a State Law Case Which Turns On Its Own Unique Facts

This dispute does not involve a frontier issue of constitutional law, but instead, only the application of Alaska law to facts unique to a small subdivision carved out of America's last frontier.

The scope of the original roadway easement dedicated by the Andrews in 1976 for "access for ingress and egress over and through . . . [the property subdivided] for the benefit of all owners of property adjacent to the said right of way . . . and to the public generally without limitation" is a local issue properly decided not in the federal courts in Seattle, San Francisco, or Washington, D.C., but rather, by Alaska's courts under state law governing conveyances and rights-of-way. Any factual claim by Ms. Dickerson that the Borough somehow physically blocked her private access through her old jeep trail should be decided as well as an ordinary trespass claim under Alaska law, and not under the Constitution or Civil Rights Laws. Whether the Borough obeyed the substantive and procedural dictates of its own ordinances and Alaska statutes in vacating the public right-of-way is an issue best left to Alaskan, rather than federal courts. Similarly, whether the Borough would apply technical standards governing construction of Pioneer Access Roads to Dickerson's own subdivision, and whether she failed to exhaust available local appellate remedies upon vacation of a portion of the "old" easement, are also legal

issues significant only to the parties and are properly resolved under local law. Judge Singleton spoke appropriately for the federal judiciary on March 3, 1993, when he stated "[t]his is not a federal case" [Pet. App. J-13], and wisely decided not to involve the federal courts in what is simply a dispute between private landowners over exercise of private rights under the 1976 easement and the question of whether the Borough properly exercised its power under Alaska law to vacate a public right-of-way. Under *U.S. v. Johnson*, 268 U.S. 227 (1925) and *Texas v. Mead*, 465 U.S. 1041 (1984), certiorari is not appropriate here.

C. Dickerson Failed to Avail Herself of Available Appellate Remedies Under Alaska Law

Representing not only herself but the co-owners of her property as well, Ms. Dickerson attended all three public hearings of the Borough's Platting Board, and gave oral and written testimony before the Board approved the vacation on June 20, 1991. [App. K] At the conclusion of public testimony on June 20, 1991, the Board voted in open session to approve the vacation, subject to several conditions. [App. M] Unquestionably, Ms. Dickerson and the persons she represents knew of the Platting Board's final action during the meeting of June 20, 1991, because she was present during that meeting when the decision was made. For reasons still a mystery, Ms. Dickerson did not appeal that action to an intermediate Borough Board of Adjustment and Appeals, nor did she pursue any sort of administrative appeal from that decision to the courts of Alaska within 30 days as required under Alaska law.

[App. K] Instead, she waited more than eight (8) months or until March 4, 1992, before bringing an original action in federal court. Because Ms. Dickerson did not avail herself of any appellate remedy under Alaska law available after June 20, 1991, the Borough's decision to vacate the public right-of-way is now final as a matter of Alaska law. *See Diedrich v. City of Ketchikan*, 805 P.2d 362 (Alaska 1991)[5] The availability of adequate state remedies, including administrative appeals and resort to state courts, to correct the alleged constitutional deprivation by the Borough's Platting Board, precludes a federal challenge to that action. *See Parratt v. Taylor*, 541 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981). If the Platting Board's decision is final as a matter of Alaska law, this Court should not condone Dickerson's failure to timely pursue local appellate remedies by granting certiorari to lower federal courts that have already found her federal claims without merit.

CONCLUSION

This is not a federal case. At one level it is simply a dispute between Ms. Dickerson and the Williamses over whether she may continue to use a right-of-way granted to her and to surrounding private property owners in 1976. That question is one which lies properly in the courts of the state of Alaska under Alaska law. This case also represents only Ms. Dickerson's belated effort to use

[5] State and local laws governing appeals from vacations are excerpted in Appendices C and D.

the federal courts to challenge an action taken by the Borough which should have been brought in state court under Alaska law. At another level, this litigation is simply Ms. Dickerson's way of circumventing Borough subdivision regulations by seeking a federal order excusing her from minimum road construction standards required of persons subdividing land within the Matanuska-Susitna Borough. The application of those standards to any subdivision Ms. Dickerson may wish to pursue is purely a matter of state law for which adequate appellate remedies under Alaska law are guaranteed to Ms. Dickerson. Accordingly, this controversy should remain in Alaska.

Respectfully submitted,

ALLAN E. TESCHE
RUSSELL, TESCHE & WAGG
510 L Street Suite 300
Anchorage, Alaska 99501
(907) 258-1747

Attorney for Matanuska-Susitna Borough

APPENDICES

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*In the interest of brevity, exhibits to Affidavits are not provided.

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDGMENT IN A CIVIL CASE

M. Ashley Dickerson, William F. Bocast, William Andrew, Mary Andrew,
Plaintiffs

vs.

Case Number: A92-281

Duke Williams, Jean Williams, and Matanuska Susitna Borough,
Defendants

___ ***JURY VERDICT.*** *This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.*

XX ***DECISION BY COURT.*** *This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.*

IT IS ORDERED AND ADJUDGED

THAT the plaintiffs take nothing, that their action based upon 42 U.S.C. § 1983 be dismissed on the merits, and that their state law claims be dismissed without prejudice to their being brought in state court, and that the Defendants Duke Williams, Jean Williams and Matanuska Susitna Borough recover of the plaintiffs M. Ashley Dickerson, et al. their costs of the action.

APPROVED:

/s/ James K. Singleton
U.S. District Court Judge Singleton

3/10/93
Date

PHYLLIS RHODES
Clerk

/s/ Cathy A. Catterson
(By) Deputy Clerk

cc: O&J 4915
M. A. Dickerson
A. Tesche
C. RAY
APPEALS CLERK

APPENDIX B

JUDGMENT

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 93-35237
CT/AG#: CV-92-281-JKS

M. ASHLEY DICKERSON, aka Mahala Ashley Dickerson; WILLIAM F. BOCAST; WILLIAM ANDREW; MARY ANDREW

Plaintiffs – Appellants

v.

DUKE WILLIAMS; JEAN WILLIAMS; MATANUSKA SUSITNA BOROUGH

Defendants – Appellees

(Filed Sept. 6, 1994)

APPEAL FROM the United States District Court for the District of Alaska (Anchorage).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska (Anchorage) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED. Costs taxed.

Filed and entered July 22, 1994.

cc: Dickerson
Tesche
Ray
Judge Singleton

APPENDIX C

ALASKA STATUTES

Title 22

Sec. 22 10.020 Jurisdiction of the superior court.

. . .

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

Title 29

Chapter 40. Planning, Platting, and Land Use Regulation

Sec. 29.40.010 Planning, platting, and land use regulation. (a) A first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis.

Sec. 29.40.050 Appeals from administrative decisions. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, hearing officer, board of adjustment, or other body. The assembly shall provide for an appeal from a decision on a request for a variance

from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of a hearing officer, or for the composition, appointment, and terms of office of a board of adjustment or other body established to hear appeals from administrative actions. The assembly may define proper parties and prescribe evidentiary rules, standards of review, and remedies available to the hearing officer, board of adjustment, or other body.

Sec. 29.40.060 Judicial review. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of a hearing officer, board of adjustment, or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal heard solely on the record established by the hearing officer, board of adjustment, or other body.

Sec. 29.40.070 Platting regulation. By ordinance the assembly shall adopt platting requirements that may include, but are not limited to, the control of

(1) form, size, and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities and improvements.;

(4) dedication of streets, rights-of-way, public utility easements and areas considered necessary by the platting authority for other public uses.

Sec. 29.40.080 Platting authority. (a) The assembly by ordinance shall establish a platting authority to administer subdivision regulations and to perform other duties as required by the assembly. The platting authority may consist of members of the planning commission or of other municipal residents.

(b) The assembly may by ordinance provide for an administrative official to act as the platting authority with regard to abbreviated plats.

Sec. 29.40.140 Hearing and Determination. (a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

APPENDIX D

MATANUSKA-SUSITNA BOROUGH CODE (MSB)

Chapter 15.38

BOARD OF APPEALS

15.38.010 Board established, delegation.

There is a Board of Adjustment and Appeals, which pursuant to AS 29.33 delegated the board of adjustment function of the Borough Assembly. The Board of Adjustment and Appeals shall hear appeals from the Platting Board, from the Planning Commission, shall hear all appeals from decisions on preliminary plats, variances, waivers, dedications, vacations, zoning enforcement, special use district enforcement, conditional uses and variances except for:

1. Appeals of enforcement orders under the Houston Land Use Ordinance which appeals are to the Houston City Council acting as the Board of Adjustment;

2. Appeals under the Wasilla Development Code which appeals are to the Wasilla City Council under MSB 17.44.433; and

3. Appeals under the Palmer Land use Ordinance, MSB 17.12

15.38.110 Commencement of appeal – Stay.

A decision of an Enforcement Officer, Board or Commission of the Borough is final unless an appeal of the final decision is commenced within fifteen days after the

action appealed from, including decision on reconsideration, on the application at issue. Upon commencement of an appeal, the decision appealed from is stayed until the decision on appeal becomes final, except that in the case of a zoning or special land use district enforcement proceeding, the Board or a court may issue an enforcement order based on a certificate of imminent peril to life or property made by the Enforcement Officer.

15.38.120 Appeals procedure.

A. An interested party, including but not limited to a Borough or City official, may file with the Board of Adjustment and Appeals a notice of appeal which must specify objections to the act or decision from which the appeal is taken in detail, must include the appellant's mailing address or that of his attorney and must be accompanied by a filing fee of one hundred dollars. The term "an interested party" is defined, for purposes of appeals from Platting Board actions, as:

1. The applicant before the Platting Board;

2. Any person adversely affected by the decision who appears before the Platting Board and makes an oral or written presentation; or

3. Any governmental agency.

B. The notice of appeal shall be filed with the Clerk within fifteen days from the date on which the alleged error in zoning or special use district enforcement by an officer of local government or decision of the Planning Commission or Platting Board was made. If an appeal is

not taken as provided in this subsection, the right to appeal is forfeited.

15.38.210 City Council or Assembly review of vacation.

A decision to grant a vacation is not effective unless approved by the City Council if the vacated area is within a city or by the Assembly if the vacated area is within the Borough area outside cities. The Council or Assembly shall have thirty days from receipt of the decision to approve the vacation. A vote resulting in a failure to approve a vacation shall constitute a veto of the vacation. If the vacation is not vetoed within the thirty-day period, the consent of the Council or Assembly shall be considered to have been given to the vacation. For this purpose, the Platting Board decision shall be the date that the Platting Board renders its decision, if there is no appeal or petition for reconsideration; and if there is an appeal or petition for reconsideration, the date of the decision upon reconsideration or appeal, whichever is the last action of the Platting Board or Board of Appeals.

15.38.230 Judicial review.

An appeal from a decision of the Board may be taken within the time prescribed in the Rules of Appellate Procedure, Part 600, of the State of Alaska, by any municipal officer, taxpayer or person, jointly or severally aggrieved. The Clerk shall estimate the cost of preparing the transcript of the public hearing and compiling the record on appeal. The appellant must deposit the estimated costs with the Clerk in advance. Upon completion of the record on appeal, the Clerk shall refund any excess

deposit or charge the appellant for costs exceeding the deposit.

16.10.065. Notice – Public hearing.

A. Notice of any public hearing required under this title shall be given in accordance with this section.

B. Forms of notice are as follows:

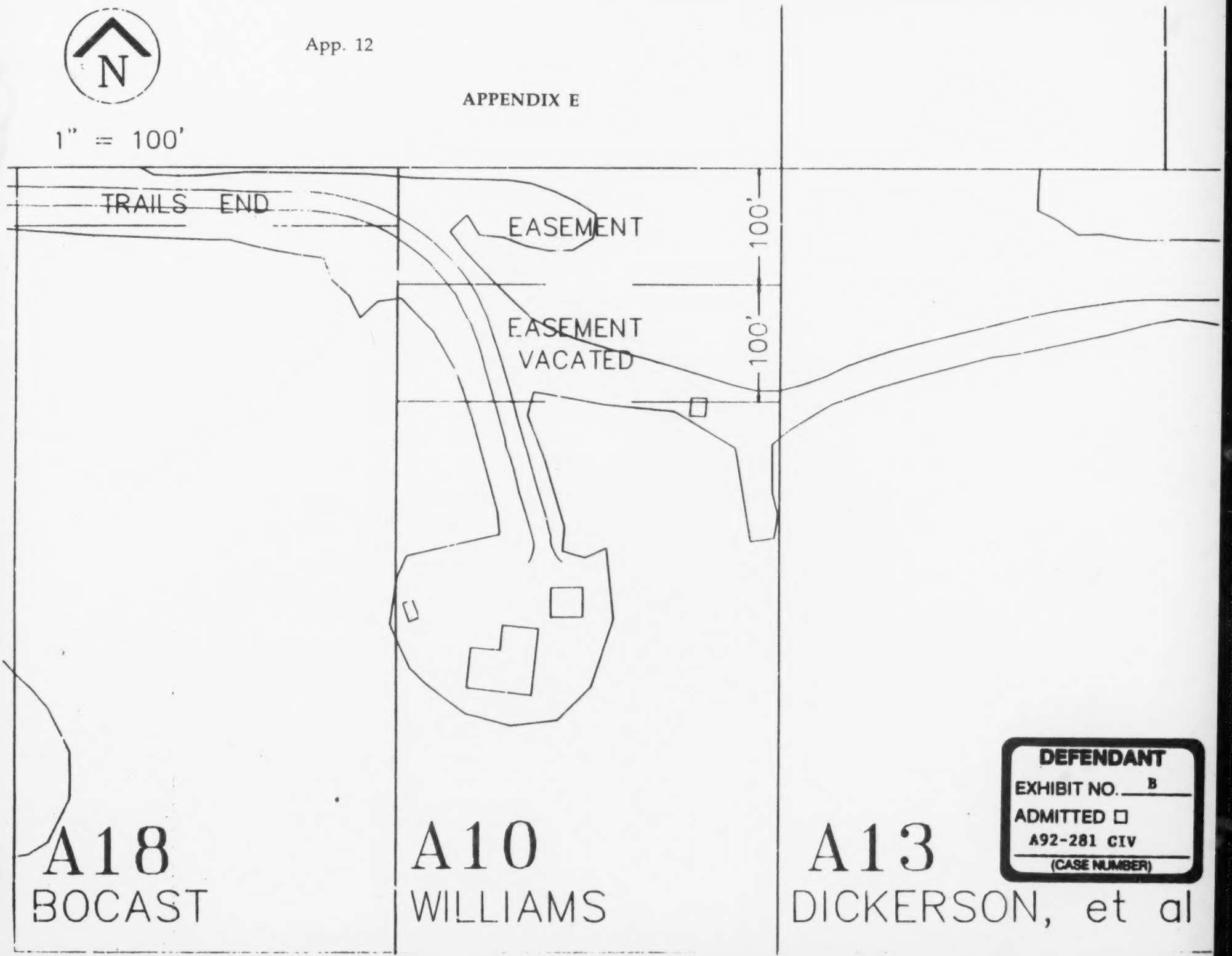
1. Publication in a newspaper of general circulation in the Borough one week prior to the public hearing; and

2. Mailing at least fifteen working days before the public hearing to all record owners of property within a distance of six hundred feet of the exterior boundary of the property that is the subject of the application, or to the record owners of the five tax parcels nearest the property that is the subject of the application, whichever is the greater number of persons, and, if the property described in the application lies within a recorded subdivision, to all persons holding a legal interest in property within that subdivision. As used in this subdivision, "record owner" means the person or persons listed as the owner on the property tax records of the Borough Assessor. The notice shall be mailed to the record owner at the address stated in the current property tax records of the Borough Assessor; and

. . .

F. The failure of any person to receive any notice required under this section, where the records of the Borough indicate the notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this title.

APPENDIX E


N
1" = 100'
TRAILS END
EASEMENT
100'
EASEMENT
VACATED
100'
A18
BOCAST
A10
WILLIAMS
A13
DICKERSON, et al
DEFENDANT
EXHIBIT NO. B
ADMITTED
A92-281 CIV
(CASE NUMBER)

APPENDIX F

MATANUSKA-SUSITNA BOROUGH
PLATTING BOARD
RESOLUTION SERIAL NO. 91 – 5 – V

BOOK 0661 PAGE 768

A RESOLUTION OF THE PLATTING BOARD OF THE MATANUSKA-SUSITNA BOROUGH APPROVING THE VACATION OF A PORTION OF A PUBLIC USE EASEMENT FOR TRAILS END RECORDED IN BOOK 121, PAGE 186 AFFECTING THE E1/2 E1/2 SW1/4 NE1/4 SECTION 30, TOWNSHIP 17 NORTH, RANGE 2 WEST, SEWARD MERIDIAN, ALASKA. LOCATED WITHIN THE PALMER RECORDING DISTRICT.

WHEREAS, Duke & Jean Williams petitioned the Platting Board of the Matanuska-Susitna Borough to vacate any public interest in a portion of a public use easement for Trails End recorded in Book 121, Page 186 affecting the E1/2 E1/2 SW1/4 NE1/4 Section 30, Township 17 North, Range 2 West, Seward Meridian, Alaska as the excessive right of way is unnecessary, a road running in a straight direction will be easier to develop, maintain and be safer; and

WHEREAS, notice of Public Hearing for the purpose of vacating any public interest was published and notices sent to affected property owners not signing the petition; and

WHEREAS, the Platting Board heard testimony for or against the petition and considered the merits of the petition; and

WHEREAS, the Platting Board approved the vacation request subject to the approval of the Matanuska-Susitna Borough Assembly within 30 days of the Platting Board action and providing alternate, uninterrupted, equally constructed access through the subject property within the 100' remainder easement prior to recordation of the vacation resolution; and

WHEREAS, as the Matanuska-Susitna Borough Assembly did not hold any regularly scheduled meetings within the 30 day time frame, the vacation request as approved by the Platting Board was automatically approved pursuant to AS 29.40.140(b); and

WHEREAS, the road was constructed to the conditions of approval and inspected and signed off by the Department of Public Works on August 23, 1991;

NOW THEREFORE, the Matanuska-Susitna Borough Platting Board resolves that any public interest in the southern 100' of the 200' public use easement for Trails End recorded in Book 121, Page 186 affecting the E1/2 E1/2 SW1/4 NE1/4 Section 30, Township 17 North, Range 2 West, Seward Meridian, Alaska is hereby vacated.

PASSED AND APPROVED by the Platting Board of the Matanuska-Susitna Borough, on the 20th day of June, 1991.

September 9, 1991

/s/ John Duffy
John Duffy, Planning Director
Matanuska-Susitna Borough

ATTEST:

/s/ Marilyn McGuire
Marilyn McGuire, Platting Clerk

(Seal)

91-010655

PALMER REC
DISTRICT 15-
REQUESTED BY /s/ Duke Williams

'91 SEP 10 PM 3 11

APPENDIX G

Allan E. Tesche, Esq.
Russell & Tesche
510 L Street, Suite 300
Anchorage, Alaska 99501
(907) 258-1747
Attorneys for Matanuska-Susitna Borough

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, and WILLIAM F. BOCAST, WILLIAM ANDREW, and MARY ANDREW,	)	
Plaintiffs,	)	Case No. A92-281
vs.	)	Civil
DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,	)	
Defendants.	)	

AFFIDAVIT OF GEORGE STROTHER

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

GEORGE STROTHER being first duly sworn upon oath deposes and states:

1. I am presently employed by the Matanuska-Susitna Borough as Engineering Division Manager of the

Department of Public Works and have served in that capacity for approximately three years. I supervise Borough employees assigned to the Borough's Public Works Department who inspect subdivisions and determine compliance by subdividers with subdivision regulations and the terms and conditions of approvals granted by the Platting Board. I am a registered Civil Engineer and registered Land Surveyor by the State of Alaska.

2. Attached with this affidavit as Exhibit A is an aerial photograph taken in 1986 by a firm under contract to the Matanuska-Susitna Borough. With the photograph is an overlay (Exhibit B) prepared from official topographic maps maintained by the Borough. To the best of my knowledge, the information contained on the overlay is correct, and the photograph accurately depicts and property in question as it existed when the photograph was taken. Except for placement of the "new" roadway or jeep trail in the north 100 foot easement in 1991, the location of the older jeep trail, depicted in the photograph on the 40-acre Dickerson property, remains largely the same today. The lettered numbers on the overlay correspond to several of the separate photographs I took in the vicinity on July 20, 1992.

3. On May 16, 1991, I inspected the Williamses' property to make a preliminary determination over the feasibility of replacing existing trails in the south 100 foot portion of the easement with a new roadway to be located in the north 100 foot portion of the easement. From the initial field walkthrough, I did not see any great difficulty in building the road in the northern one-half of

the 200 foot public use easement. Attached to this affidavit as Exhibit C is a true and correct copy of my report to which stated that opinion.

4. Platting Board Resolution Serial No. 91-5-V required the Williamses to provide "alternate, uninterrupted, equally constructed access through the subject property within the 100' remainder" before recordation of the vacation. In my professional opinion, the Williamses fully complied with that condition. The new roadway was inspected by the Public Works Department of the Borough on August 23, 1991. The inspection report, a copy of which is attached as Exhibit D, revealed that the new road is 12 feet wide and contained a 6 inch gravel base and was 330 feet long and satisfied the Platting Board's requirements. In my opinion, the 1991 roadway as constructed is much better than the previously constructed jeep trail because it lies within a dedicated easement, it is cleared and has a good gravel surface, and is not blocked by trees. In constructing the new road, the Williamses were not required by the Platting Board to construct the roadway to Borough subdivision standards or so-called Pioneer Access Road Standards because they did not seek to subdivide land; rather they sought only a vacation of a portion of a previously dedicated public use easement and were required by the Board to replace existing access with comparable access.

5. I also inspected the roadways in question on July 20, 1991. I drove to the site in a two-wheel drive 1992 Chevy Cavalier and was able to drive to the end of the new roadway located within the 100 foot public use easement. The new roadway has a good sandy gravel surface with some minor rutting and one sinkhole. Photographs

attached to this affidavit accurately depict the present condition of the new roadway. This roadway, like any construction, will need maintenance. The one sinkhole I observed at midpoint in the new roadway can be filled with a pickup load of gravel.

6. At 320 feet south of the corner is a center line of the "old" jeep trail traveling southeast. This measurement indicates that the old jeep trail at this point is well outside of the original 200 foot easement. The trees that had fallen across this jeep trail appear to be naturally, downed trees with whole root stumps or shattered trunks and natural no markings indicating they had been cut by humans. In my opinion, the "old" jeep trail previously used to access the Dickerson property cannot be used by or accessed by fire trucks or other emergency vehicles.

7. Attached with this affidavit as Exhibit E is a packet containing some 20 photographs of the area in question. The photos accurately depict present condition of the area. The photographs are numbered and were taken in the following locations:

No. 4: Standing about 100' west of the NW corner of Williamses' property looking west on Trails End Road.

No. 5: Standing in the same location looking east with Williamses' driveway to the right and the new jeep trail access on the left.

No. 6: Standing about the NW corner of Williamses' property looking down the jeep trail with the Chevrolet Cavalier parked at the end.

No. 7: Standing about half way down the jeep trail with the dip in the road just before the first tree shadow.

No. 8: Looking at the end of the jeep trail with the natural vegetation beyond. Note that there are no berms or other impediments for entering onto the property.

No. 9: Standing in front of the car looking west showing the dip in the trail.

No. 10: Standing just south of the NE property corner looking south along the property line. Along the left side of the photo is the property line clearing and on the right shows the car and the end of the jeep trail.

No. 11: Standing on the property line looking west along the jeep trail.

No. 12: 320′ south of the NE corner, looking southeasterly along the jeep trail on the Dickerson property. Note the fallen-over and bent trees.

No. 13: 325′ south of the NE corner looking north along the property line, showing the previous surveyor's lath at the bottom of the photograph.

No. 14: About 220′ south of the Williamses' NE property corner looking up the clearing that may have been an old jeep trail.

No. 15: Looking up the old jeep trail at 320′ south.

No. 16: Again, looking up the jeep trail 320′ south from a slightly different advantage point for stereo viewing.

No. 17: The berm pile about 170' south of the NE corner. Note the reel tape measure and pen for scale.

No. 18, 19, 20, & 21: Pan views from the east end of the jeep trail. No. 18 is looking southeasterly, thence around to No. 21, which is looking northeasterly. Note that there are no dirt piles or debris piles that would prohibit any construction past the end of the new jeep trail.

No. 22: The Borough car at the end of the jeep trail.

No. 23: The sinkhole in the road with the tape and pen for scale. Note you can see the tracks that the Borough car made while driving through this area.

No. 24: Looking from the sinkhole in the road easterly to the Borough car.

8. I am aware of no action by the Matanuska-Susitna Borough, its agents, employees, contractors, or persons acting under the direction of the Borough to physically block or otherwise impede access by Ms. Dickerson or persons she represents to any portion of the 200 foot easement situated on the Williamses' property. As the original dedication of the 200 foot easement may also have given Ms. Dickerson and other adjoining landowners a private right of way across that property, that right of way could not be taken away by action of the Borough Platting Board or otherwise blocked by physical actions of Borough officials. If that access has been physically blocked, it has been done without the sanction of the Borough.

9. While the Williamses' vacation was reviewed by the Public Works Department, during our inspection activities, and throughout our contacts with the parties involved, I do not recall any statement or action by any person which would indicate any sort of conspiracy, plot, or other concerted effort on the part of the Borough, the Williamses, or any other person to deprive Ms. Dickerson, her Co-Plaintiffs, or any other person of lawful, physical, or legal access to their property, or to otherwise deprive them of their constitutional rights. I recall absolutely no racial comments or slurs directed at any person.

10. The Matanuska Susitna Borough does not maintain Trails End Road because it has not been accepted by the Borough for road maintenance.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

/s/ George C. Strother
George C. Strother

SUBSCRIBED AND SWORN TO before me this 28th day of July, 1992.

/s/ Vicki M. Rees
Notary Public in and for Alaska
My Commission Expires: 8-8-94

(Seal)

APPENDIX H

NEW ROAD 1992
(Photograph 8, Affidavit of George Strother)

APPENDIX I

NEW ROAD 1992
(Photograph 7, Affidavit of George Strother)

APPENDIX J

OLD JEEP TRAIL – 1992
(Photograph 15, Affidavit of George Strother)

APPENDIX K

Allan E. Tesche, Esq.
Russell & Tesche
510 L Street, Suite 300
Anchorage, Alaska 99501
(907) 258-1747
Attorneys for Matanuska-Susitna Borough

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, and WILLIAM F. BOCAST, WILLIAM ANDREW, and MARY ANDREW, Plaintiffs, vs. DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH, Defendants.	Case No. A92-281 Civil

AFFIDAVIT OF RICK BROWN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

RICK BROWN, being first duly sworn upon oath deposes and states:

1. I am presently employed by the Matanuska-Susitna Borough as its Platting Officer and have held that position for approximately six (6) years. As Platting Officer, I handle or supervise all staff functions of the Matanuska-Susitna Borough Platting Division with respect to subdivision applications, their processing, review, and submission to regulatory bodies of the Matanuska-Susitna Borough, including its Platting Board and the Borough Assembly. I also serve as Secretary to the Platting Board, and am official custodian of records maintained by the Platting Board and the Platting Division with respect to subdivision activities within the Borough. I attended the meetings of the Platting Board of January 3, 1991, April 4, 1991, May 16, 1991 and August 20, 1991 which are described in this affidavit.

2. Borough subdivision records indicate that in 1976, William and Mary Andrew subdivided approximately eighty (80) acres of real property into four (4) separate parcels of land. In connection with that subdivision, and as required by the Borough, the Andrews conveyed to the owners of real property adjacent to the subdivision and to the general public easements for purposes of right of way. The right of way easement ran east-west and was 200 ft. in width. Attached as Exhibit A is a true and correct copy of those conveyances. Conveyance of a right of way to the public in general over the property described was required as a condition of Borough approval of their subdivision.

3. Jeep trails have been constructed in portions of the 200 foot easement for purposes of providing vehicular access across the Andrews' property and to adjoining parcels. Jeep trails crossing the southern 100 foot portion of the easement area were constructed for that purpose. Construction of those trails was accomplished in a manner consistent with Borough approval of the 1976 subdivision, except that portions of those trails appear to traverse private property not encumbered by the 1976 easement. The aerial photograph attached to the affidavit of George Strother depicts the condition of the property as it existed before vacation of a portion of the public use easement in 1991.

4. On June 20, 1991, Duke and Jean Williams received approval by the Platting Board of the Matanuska-Susitna Borough to vacate the southern 100 foot portion of the public use easement previously dedicated by William and Mary Andrews. A true and correct copy of Resolution Serial No. 91-5-V executed on behalf of the Platting Board of the Matanuska-Susitna Borough on September 9, 1991, details that action. Exhibit B. In connection with that approval, the Williamses were required to provide "alternate, uninterrupted, equally constructed access through the subject property within the 100' remainder easement prior to recordation of the vacation resolution." The Williamses complied with that condition by construction of a new road ("jeep trail") located wholly within the north 100 foot portion of the easement previously granted by the Andrews. That construction was completed on or about August 23, 1991.

5. As required by Section 16.10.065 of the Borough Code, owners of record of certain real property were

provided with written notice of the Williamses' application for vacation of a roadway easement in Case No. PPH-5. That case was first set for public hearing before the Platting Board on January 3, 1991. Paragraphs 2 and 3 of the affidavit of Jill Carricaburu describe the newspaper advertisements for that and subsequent public hearings conducted by the Platting Board, as well as the specific personal notice mailed to owners of record of affected parcels, including Ms. Dickerson.

6. The notification of public hearing sent to Ms. Dickerson and other owners of record invited written comments on the proposed action. Attached as Exhibit C is a true and correct copy of written comments received by the Borough from M. Ashley Dickerson with respect to the proposed vacation. The Borough also received a more formal "Oppositioin to Vacation of Easement" from Ms. Dickerson on or about December 17, 1990, in which she opposed the proposed vacation, and promised to appear in person at the hearing of January 3, 1991, and to present telephonic testimony of the original subdivider, William Andrew, with respect to the application. Attached as Exhibit D is a true and correct copy of that document which was filed with the Board by Ms. Dickerson before the hearing of January 3, 1991.

7. On January 3, 1991, the Platting Board met to consider the Williamses' application for vacation set forth in Case No. PPH-5. Attached as Exhibit E is a true and correct copy of minutes of that meeting. Those minutes indicate that Ms. M. Ashley Dickerson was present and testified in opposition to the vacation request. As indicated on page 2 of those minutes, Ms. Dickerson advised the Board that William Andrew, who owns a deed of trust

on the subject property, is available by telephone for testimony to the Board and opposed the application. Ms. Dickerson also represented to the Board that Mr. Larry Card, an owner of adjacent property, also opposed the vacation. At the conclusion of the public hearing of January 3, 1991, the Board continued the matter until its first meeting in April 1991, in order to receive additional information from the parties.

8. The Board next met on April 4, 1991, to review the matter. At the request of petitioners, Duke and Jean Williams, the case was continued until May 16, 1991, in order to allow additional time for the Williamses's engineers to perform requested test holes and soil samples. Attached as Exhibits F and G are true and correct copies of the Williamses' request for a continuance and the staff comment on that request.

9. On May 16, 1991, the Board again reviewed the matter and resumed its public hearing. Present at that hearing, and testifying before the Board, were Ms. Dickerson and Mr. Larry D. Card, a co-owner of the Dickerson property. At the conclusion of the public hearing, the Board postponed action until June 20, 1991. Attached as Exhibit H is a true and correct copy of the Board's minutes of May 16, 1991.

10. Prior to the June 20, 1991, hearing, the Board received an additional letter from Ms. Dickerson dated June 11, 1991, with respect to the Williamses's easement vacation, which letter again reiterated her opposition to the proposed vacation. A copy of that letter is attached as Exhibit I. On June 20, 1991, the Board again considered the Williamses' vacation and took additional testimony.

Ms. Dickerson and Mr. Card testified on June 20, 1991, in opposition to the proposed vacation. Attached with this affidavit as Exhibit J is a true and correct copy of the Board minutes of June 20, 1991.

11. Attached also as Exhibits K, L, and M are true and correct copies of the customary "Notices of Platting Board Actions" prepared by Platting Board staff following the public hearings of January 3, 1991, May 16, 1991, and June 20, 1991. Attached with this affidavit as Exhibit N is a true and correct copy of the staff analysis and recommendation submitted to the Platting Board before its meeting of June 20, 1991.

12. On August 15, 1991, the Platting Board reviewed its earlier action with respect to the Williamses' easement. Review of this matter was requested by staff solely for the purpose of determining whether the Platting Board, in its action of June 20, 1991, had in fact required construction of the "new" roadway within the 100 foot easement to meet higher pioneer access standards. In that meeting, the Borough Platting Board did not change, alter, otherwise modify the decision made on June 20, 1991. Instead, informal commentary during that meeting indicated that certain members did not intend to require construction of the new roadway to higher pioneer access standards. Attached to this affidavit as Exhibit O is a true and correct copy of the minutes of the Board's meeting of August 15, 1991.

13. Ms. Dickerson did not appeal the Platting Board's action to the Borough's Board of Adjustment and Appeals as allowed by MSB 15.38 within the time provided by law for such appeals. Under state law, the

Borough Assembly has the right to veto vacation of public use easements or dedications. That action must be taken within thirty days following vacation of an easement by the platting Board. No such action was taken by the Borough Assembly, as allowed by law, and accordingly, Resolution Serial No. 91-5-V was prepared and recorded, thereby completing the vacation. Except for this lawsuit, no appeal to any body has been taken by Ms. Dickerson or her co-owners.

14. Official records of the Platting Division of the Matanuska-Susitna Borough reveal no appeal or other legal challenge was made to the Platting Board's action of June 20, 1991, within 30 days of that date, or September 9, 1991, the date upon which John Duffy, as Planning Director, executed Resolution Serial No. 91-5-V of the Platting Board.

15. It is my professional opinion that the roadway completed by the Williamses in August 1991 meets or exceeds the requirements of Resolution Seal No. 91-5-V for the following reasons: The roadway was inspected by the Public Works Department of the Borough on August 23, 1991. The inspection revealed that the new road is 12 feet wide and contained a 6 inch gravel base and was 330 feet long and complied with Resolution Serial No. 91-5-V. I also inspected the roadway on July 17, 1992. The new roadway does not traverse property outside of the easement, is relatively straight, and contains a gravel base, providing superior access than the earlier one.

16. Certain Borough roads must meet what are called "pioneer access standards." Resolution Serial No.

91-5-B did not, however, require construction of the alternate access by the Williamses to "pioneer construction standards" because the Williamses did not subdivide their property. Instead, the Williamses were required only to provide equivalent physical access in the northern part of the original easement after the south 100 feet was vacated.

17. Of the Borough officials responsible for, and involved with, the processing of the Williamses' request for vacation of the subject property, I am perhaps the most knowledgeable. I attended the various public hearings of the Borough Platting Board as well as various conferences with the Williamses prior to official consideration by the Platting Board of their vacation request. At no time do I recall any statement or action by anybody which would indicate any sort of conspiracy, plot, or other concerted effort on the part of the Borough, the Williamses, or any other person to deprive Ms. Dickerson, her co-plaintiffs, or any other person of lawful, physical, or legal access to their property, or to otherwise deprive them of their constitutional rights. I recall absolutely no racial comments or slurs directed at any person, and with the exception of Ms. Dickerson and Mr. Card, who I understand are Black, do not know the race or nationality of other persons Ms. Dickerson claims are adversely affected by vacation of the Williamses' easement.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

/s/ Rick Brown
Rick Brown

SUBSCRIBED AND SWORN TO before me this 17th day of July , 1992.

/s/ Susan B. Lutz
Notary Public in and for Alaska
My Commission Expires: 9-6-93

APPENDIX L

Allan E. Tesche, Esq.
Russell & Tesche
510 L Street, Suite 300
Anchorage, Alaska 99501
(907) 258-1747
Attorneys for Matanuska-Susitna Borough

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, and WILLIAM F. BOCAST, WILLIAM ANDREW, and MARY ANDREW, Plaintiffs, vs. DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH, Defendants.	Case No. A92-281 Civil

AFFIDAVIT OF JILL S. CARRICABURU

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

JILL S. CARRICABURU, being first duly sworn upon oath deposes and states:

1. I am presently employed by the Platting Division of the Matanuska-Susitna Borough and am administrative secretary to Borough Platting Officer Rick Brown. I have been so employed for over three (3) years. My duties include the preparation of official notices for hearings of the Platting Board of the Matanuska-Susitna Borough, together with the care and custody of such notices, mailing lists utilized by the Matanuska-Susitna Borough in connection with subdivision matters, and official records maintained by the Matanuska-Susitna Borough Platting Division and its Platting Board.

2. As required by the Matanuska-Susitna Borough Code of Ordinances, owners of record of certain real property were provided with written notice of the Williamses' application for vacation of a roadway easement, contained in Case No. PPH-5. That case was set for public hearing before the Platting Board of the Matanuska-Susitna Borough on January 3, 1991. Attached as Exhibit A to this affidavit is a true and correct copy of the newspaper notice of that hearing, which notice was published in the Frontiersman on December 26, 1990. Attached as Exhibit B is a true and correct copy of the notification of public hearing which was mailed to owners of record according to Borough assessment records, whose names appear on Exhibit C, attached hereto. Those notices were mailed on or about December 3, 1990.

3. Attached also with this affidavit as Exhibits D and E are true and correct copies of the newspaper notices published in the Frontiersman advertising the

Board's hearing of May 16, 1991, and June 20, 1991, during which public testimony was taken with respect to the Williamses' application.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

/s/ Jill S. Carricaburu
Jill S. Carricaburu

SUBSCRIBED AND SWORN TO before me this 17 day of July , 1992.

/s/ Marilyn McGuire
Notary Public in and for Alaska
My Commission Expires: 2-22-93

MARILYN McGUIRE
NOTARY PUBLIC
STATE OF ALASKA

APPENDIX M

Platting Board Minutes
Regular Meeting June 20, 1991

DEFENDANT
EXHIBIT NO. J

E. CONTINUATION OF PUBLIC HEARING FOR WILLIAMS PUBLIC USE EASEMENT VACATION REQUEST from May 16, 1991 meeting.

Mr. Brown gave an overview and background of the case, stating that on December 12, 1990 eight public hearing notices on the case were mailed out. One letter of objection for the first public hearing was received from Ms. M. Ashley Dickerson. We have since received an additional letter of objection from Ms. Dickerson. Mr. Brown stated that staff recommends approval of the vacation.

Chairman opened the public hearing.

Ms. Dickerson asked the permission of the Board to show a video taken by herself and her surveyor showing the Board Members the area in question. The video was taken May 30, 1991.

After the video was shown Mr. Brown continued discussion and reiterated staff's position on the case.

Mr. Larry D. Card addressed the Board as to the recommendation for petitioner to provide equal alternate access. Further discussion continued.

Mr. Tucker called the public hearing to a close.

Mr. Campbell moved to accept the Williams Vacation on Staff Recommendations 1 through 4 with additional findings as indicated on page 27, (Findings 1 through 7).

Adding Finding number 8. A registered engineer licensed with the State of Alaska stated that a Borough approved road could be built within the north 100′ of the existing 200′ public use easement, and that the road should be built to the standard at which the standard is at west end of north 100′ and continue across to the east boundary of said easement within approximate location of the test holes supplied us by a registered engineer on the drawing submitted and stamped by Mr. F.R. Dollerhide and dated June 5, 1991.

Mr. Colberg seconded the motion. Mr. Brown added a suggested Finding, number 9. The existing jeep trail and trail constructed in May of 1991 leaves the 200′ access easement and trespasses on private property. The alternate equal access will be through a public access easement thus providing superior and legal access to the adjacent property. Motion maker approved of the additional finding to be added to the motion. Mr. Colberg also approved of the additional finding.

Mr. Colberg added an additional Finding, number 10, that the road contractor appearing in the video tape submitted for the record by Ms. Dickerson also believed that a road could well be constructed to Borough standards let alone to jeep trail equivalency. The motion maker and second, both concurred with this addition.

Mr. Strother asked that Finding, number 11, be added to the motion if acceptable by the motion maker, that the existing jeep trail access the property to the east, south of the 200′ easement. The motion maker agreed also Mr. Colberg agreed with the additional finding.

Mr. Tucker called for the vote and it passed unanimously.

The Platting Board recessed for a short break at 9:45 AM. Mr. Brown excused himself from the Platting Board in order to continue his pre-scheduled vacation. Mr. Hulbert continued the meeting as Acting Chief of Platting. Mr. Tucker reconvened the meeting at 10:00 AM.

A. CONSENT – Mr. Tucker asked if there were any consent items. Mr. Hulbert responded with no consent items.

B. PUBLIC HEARING AND PRELIMINARY PLAT WITH VARIANCE FOR ASLS 89-047 Tract D to be added to Tracts A, B & C.

On 5/30/91, 11 Public Hearing Notices were mailed out; none were returned and no objections were received.

Paul Hulbert read the Staff Review Findings of the case.

Mr. Tucker opened the public hearing, no one wishing to speak the public hearing was closed. Discussion followed.

Mr. Colberg moved to accept Staff Recommendations and that Tract D be expanded toward the State Reserve Corridor to eliminate the possibility of having little parcels between the reserve corridor and the designated parcel, Tract D. Ms. Scorup seconded the motion. Voting on the motion it passed unanimously.

C. PUBLIC HEARING AND PRELIMINARY PLAT FOR ASLS 91-067.

Mr. Hulbert stated that on 5/30/91, 19 Public Hearing Notices were sent out one has been returned and no objections received.

Mr. Hulbert gave an overview of the case. Mr. Strother inquired as to whether or not the Susitna Area Plan has been adopted.

Mr. Campbell confirmed that yes the Susitna Area Plan is in existence, and is in the process of being updated.

Motion was made by Mr. Colberg to take no action on this case at this time. Ms. Scorup seconded the motion.

Supreme Court, U.S.
FILED
OCT 12 1994
OFFICE OF THE CLERK

(3)

No. 94-421

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1994

M. ASHLEY DICKERSON, a/k/a MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW and MARY ANDREW,
Petitioners,

v.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,
Respondents.

On Petition For a Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

PETITIONER'S REPLY BRIEF

M. Ashley Dickerson
Dickerson & Gibbons, Inc.
1330 East 15th Avenue
Anchorage, Alaska 99501
(907) 376-5539
ATTORNEYS FOR PETITIONER

BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

I. Was failure to give notice of the August 15th, 1991 meeting a denial of Due Process and equal protection?

II. Did the condonation of destruction of a previously-approved road and the requirement that buyers recreate same in a swamp amount to the taking of property without due process of law?

III. Was the withholding of notice of the August 15th meeting, notice of the new construction an excuse for failure of timely appeal and a denial of due process and equal protection?

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ARGUMENT

I. RESPONSE TO STATEMENT OF THE CASE

The statement of the case erroneously infers that a parcel was sold to Duke and Jean Williams immediately after the sub-dividing in 1976. In fact, the 40 acres was sold to the Browners, Cards, and Dickerson in 1981 as shown by their deed in the petition heretofore filed as Appendix P 1-4. The sale to Duke and Jean Williams did not take place until 1986 as shown by their Assumption Warranty Deed at Appendix Q 1-4 of Opening Petition. The Respondent correctly alludes to the creation of the easement as shown by Petitioner's at their Appendix I 1-2. Gross error is committed by the statement in Respondent's Brief that "Jeep trails were constructed within the roadway easement to provide vehicular access across the Andrew's property to the adjoining parcels. This is a gross mis-statement and this mis-statement has permeated the case. This falsity is depicted in Respondent's Exhibits at its Appendix J P 25. The only Jeep trails were those constructed within the 40 acres

and accessed by the Borough-approved road within the easement which the Williamses destroyed by ditching piling of debris and landscaping.

In his affidavit, Will Bocast states: "Unfortunately, the photographs are of Jeep trails which circle the 40 acres, not of the easement road ..." Bocast further states: "...the easement was rendered impassible after the advent of the Williamses and the creation of berm piles preventing travel by us in the late '80's..." PET APP A 1-2.

Respondents have, in their Appendix, reproduced color photos of Jeep trails in the 40 acres misrepresenting them as trails used to access the 40 acres. Strother, the Borough Official making the Affidavit years later, was obviously confused. The report to which he refers is included in Petitioner's Appendix at pages G 1-4. There he admits that the Williamses had "landscaped the western 150 feet of the south 100 feet of the public use easement." He added that "it does not seem to be in use by anyone and could easily be vacated without harming any access to anyone at this time, as the

Williams's currently have a lawn and have landscaped this area."

Bocast further stated in his Affidavit, "it does not take long for foliage to recreate itself in Alaska, so it is not surprising that the Jeep trails within the 40 acres grew up so rapidly after the Jeep trails were blocked and the easement closed ... the Williamses have ditched and piled berm and rubbish in our private easement in a manner which blocked our use of it...."

The Statement of Facts at page 3 of Respondent's Brief contends that on August 23rd, 1991, the Williamses built a new gravel road within the north 100-foot portion of the easement, relying on the Affidavit of George Strother, the same Borough official who condoned the landscaping of the pre-existing road destroyed by the Williamses.

Despite the fact that the requirement of the "Resolution of June 20, 1991" that the road be to the same standard of the part of Trails End to the west, which was to Pioneer Access Standards, and this requirement was reduced in the secret meeting of August 15th, 1991 to a Jeep

trail, having no standard at all, as shown by the minutes of the August 15th, 1991 meeting, PET APP H 8-9. Respondent erroneously contends that there was compliance with the June 20th, 1991 Resolution.

A vested right was given to Bocast, the Browners, the Cards, and Dickerson upon their purchase of their property, as the Planning Commission had already approved the road which the Williamses destroyed. The "Waiver Resolution," serial number 76-39 shown in Petitioner's Appendix R 1-4 gave that right. Why then would the purchasers be required, ten years later, to redo what the Borough had approved upon their original sales of their respective tracts described as numbers one, two, three, and four, respectively therein?

The only legal requirement of the purchasers of parcel four should have been the construction of roads through their 40-acre tract to provide access to their respective ten and 20-acre parcels.

The position taken by the Borough that this new requirement should be placed upon the 40-acre parcel purchasers amounts to taking from them a property right.

William and Mary Andrew could not have sold to them without having met the Borough's standard of a road to said properties. The destruction of that right by Williamses, the later purchasers of the intervening 10 acres, justified the requirement of a replacement road up to Pioneer Access standards. The approval of the road destroyed by the Williamses had stood unchallenged on high land for over 15 years, although blocked by the Williamses for five years. There was a vested right in the validation of the existing plat status according to Matanuska-Susitna Borough Platting Regulation 16.25.015 which provides that "... all plats recorded in pursuance of any law heretofore in force prior to the effective date of this title and not subsequently vacated are hereby validated, notwithstanding irregularities, and given the same legal status of those recorded under the provisions of this title."

There was no opportunity for the Borough Assembly to veto the action of the Planning Board, as a secret meeting of August 15th, 1991 and the construction of the Jeep trail were completed at a time

when the Borough Assembly was not in session.

There was no need for the petitioner's to appeal the action of June 20th, 1991, as that action was favorable to them, requiring the Williamses to restore what had been taken away by them. The false claim that the Jeep trails inside the 40 acres were all that existed would cast aspersions upon the Platting Board and the Borough, as both would have been guilty of violating their own requirements if they approved a subdivision waiver without following those requirements. No requirement of road construction was placed upon the purchasers or could be placed upon them until such time as they started to partition the 40 acres. The Waiver Resolution gave a stamp of approval on the 17th of September, 1976 of all conditions required to permit subdividing. The Borough would later require those purchasers to repurchase what they had already paid for.

The Jeep trail, as approved by the Borough, is built in wetlands as shown by the Affidavit of a professional road builder, Jake Marquez. There was nowhere

for the Jeep trail to drain, as the swamp land was all the same elevation. The Williamses had dug a ditch from the highland to facilitate drainage from their property onto the Jeep trail (PET APP C 1-3). Pioneer Access Roads are covered in the Matanuska-Susitna Borough Construction Manual at Section 009. This section provides as follows:

> "...This road, whether it is proposed or existing, shall have a minimum surface of 18 feet and a 12-inch gravel subgrade, and a gravel surface that is stable if crossing swampy areas and has adequate surface drainage. Cross drainage culverts, minimum 24-inch, will be installed where determined necessary and adequate ditches provided for drainage where necessary..."

The Affidavit of Marquez shows that ditching is impossible in this area as all terrain is of the same level.

A. RESPONSE TO CONTENTION OF THE FEDERAL DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT ISSUE

An untrue statement that Petitioners

claim insufficient notice of the June 20th, 1991 meeting is given. That meeting ended in a requirement of a construction of a Mat-Su Borough-approved road, equivalent of that to the west. There was no need to appeal therefrom. The quarrel of the Petitioners was with the secret, August 15th, 1991 meeting of the Williamses and the Platting Board where the modification was made to require only a Jeep trail. Despite the contention that no modification resulted, the following transpired:

> Having met with Mrs. Williams yesterday and Strother having met with her on a previous meeting, and her having notice of this meeting and again meeting without the presence of the others indicates a conspiracy.
>
> It was admitted that the motion was that the road should be built to the standard "at which the standard is at the west end of the north one hundred feet." They admitted some confusion since that was a

pioneer access road. They wanted to change it and did change it. A platting board member continued that "...it was not a heavily travelled road, a Jeep trail should suffice, I don't see why they'd have to build a full road."

Yet no one could prove what kind of road they had before since the Williamses had destroyed it. Brown continued with "...equally constructed to what the Jeep trail was." This is totally different from equal to that of the west. They do not realize however, that even a Jeep trail constructed in the swamp would be different from a Jeep trail constructed on high land. There was no admission of only a Jeep trail but all of the evidence presented was to the effect that it was a good, useable road. Mrs. Williams was allowed to speak and to set out that "she intended to give them a half-way decent road,"

> (Appendix H14) she had been checking out gravel prices, that the road she would give be fixed 15 times better than what they had before, but what none realized is that she destroyed what they had before. The board members proceeded to congratulate Mrs. Williams, saying she bent over backwards. She did not intend to have it a superior road like they had it stated before. "It will be much superior than what she had before. I just want you to understand that," she states, thus admitting that there was a definite change from a road to a Jeep trail.

Respondent contends on page eight (8) of its brief that the Jeep trails from inside the 40 acres were what had been the road. This is a false contention and casts aspersions on the Borough which would have approved a waiver with only a Jeep trail and no road. The roads had to have been destroyed and ditched by the Williamses, as shown by Affidavits of

Bocast (PET APP A 1-3) and Connelly (PET APP D 1-3). There is no way to use a non-existing road as claimed by Respondents for a comparison, as it was completely destroyed by the Williamses. By condoning this destruction and not requiring its reconstruction, the Platting Board has worked with the Williamses to block access to the 40 acres. Adickes v. Kress & Co., 398 U.S. 144; Jackson v. Pantazes, 810 F.2d 426 (4th Cir. 1987).

Under division three of its argument, the Borough pounces upon the black aspect of denial of the equal protection clause of the 14th Amendment as if blacks are not generally as entitled to the equal protection found in the equal protection clause of the 14th Amendment as any other citizen. Equal protection as provided by the 14th Amendment has also been denied Bocast, who is not black.

B. SUBSTANTIAL CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED

The Borough's action here is built upon the false premise that Jeep trails inside the 40 acres were the only means of access. The destruction of the Planning Board's approved road is being ignored.

The Jeep trails inside the 40 acres are all that remain to be seen, since the Williamses had destroyed, by landscaping, or ditching, the true previously-approved, Borough road. The taking of property without due process resulted, creating a substantial constitutional question regarding denial of the due process clause of the 14th Amendment. Can the destruction of access to property, by destroying a previously-approved road, and the requirement that the purchasers who suffered the destruction recreate the road in a swamp amount to the taking of property without due process, according to the due process clause of the 14th Amendment?

C. APPELLATE REMEDIES WERE MADE IMPOSSIBLE

There was no reason to appeal the June 20th, 1991 decision, as it would have restored what had been destroyed. The secret meeting and the secret construction of the Jeep trail at a time the Borough Assembly was not in session, made it impossible to meet a 30-day deadline. An examination of Platting Board Resolution, serial number 91-5-V, dated September 9,

1991, recorded in Book 0661, page 768, reveals therein the following:

> WHEREAS, the Platting Board approved the vacation request subject to the approval of the Matanuska-Susitna Borough Assembly within 30 days of the Platting Board action and providing alternate, uninterrupted, equally constructed access through the subject property within the 100' remainder easement prior to recordation of the vacation resolution; and
>
> WHEREAS, as the Matanuska-Susitna Borough Assembly did not hold any regularly scheduled meetings within the 30-day time frame, the vacation request as approved by the Platting Board was automatically approved pursuant to AS 29.40.140(b) and ...

It is obvious from the above that there was no opportunity to appeal from the final action of the Platting Board as no notice was given of the changes or the construction of the Jeep trail in the

swamp.

The whole concept is twisted by the false contention that the overgrown Jeep trails inside the 40 acres were the means of travel to and from the 40 acres instead of the actual Planning Board-approved road which the Williamses had landscaped, ditched, and destroyed. Nothing was left with which to compare, due to the work of the Williamses.

CONCLUSION

The Borough castigates the Petitioners for objecting to the requirement imposed on the Purchasers of the 40 acres of completely redoing what had been approved 15 years earlier. Having purchased certain properties already subdivided with Borough approval, then after destruction of the approved road by the Williamses, allowing them to substitute a swamp Jeep trail for the approved road, then requiring the impossible, specifically bringing a swamp Jeep trail to Pioneer Access standards amounts to taking a property in denial of the due process clause of the 14th Amendment. The 40 acres have been literally condemned by the Platting Board of the Matanuska-Susitna Borough.

DATED AT Wasilla, Alaska this 11th of October, 1994.

DICKERSON & GIBBONS, INC.

BY M. Ashley Dickerson

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